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ABSTRACT

This publication is part of a three-volume series of manuals designed to serve both as instructional guides and as ready references to some of the more complex problems of public school collective bargaining. The series is intended for use primarily by school board members, educational administrators, and other individuals interested in collective bargaining in public schools. This particular manual focuses on impasse procedures, fact-finding, and mediation up to the point of arbitration. Most of the manual consists of part 1, a narrative section that discusses mediation and fact-finding. Part 2 presents a simulation training exercise designed to give insight into impasse and fact-finding procedures. Part 3 discusses various information sources on collective bargaining for educators, and presents a bibliography of publications and films related to impasse resolution, fact-finding, and mediation. (JG)

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Resource Manual for impasse procedures in Public School Negotiation

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TRAINING RESOURCE MANUAL
FOR IMPASSE PROCEDURES
IN PUBLIC SCHOOL NEGOTIATIONS

A Project Financed by the U.S. Office
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Jan. 1977

HOW TO USE THIS MANUAL

This manual is intended to be used by school boards, school administrators, and others who use or are interested in the grievance procedure and arbitration as a method of solving grievances arising out of the employer-employee relationship in the public schools. Administrators in public schools increasingly find that an awareness of the collective bargaining process and collective bargaining contract administration is necessary for all persons on all levels in the public schools. Although the last few years have seen a proliferation of workshops and seminars on aspects of public sector collective bargaining, there have been few attempts to look at the proper role of the various components in the bargaining relationship in a comprehensive fashion.

The first section of this manual covers mediation and fact finding. The table of contents is designed in a ready reference manner to describe the process. The text is intended as a starting point for thinking and further reading. Those that are interested in studying the problem in depth are referred to the third section of the manual which is a comprehensive bibliography. The table of contents and bibliography is also intended to be used in training workshops.

The second section of the manual is designed for a training exercise in impasse procedures. This is designed to help the participants gain insight into the process.

The state of the art in impasse procedures in the public sector at the present time is primarily based upon the assumption that public employers and the representatives of the public employees can and will reach voluntary agreement on wages, hours and most of the terms and conditions of employment. While there has been some acceptance of binding third party procedures for certain segments of the public sector the right to strike is generally not available for public school personnel in most of the states of the United States. Strikes do occur and therefore the threat of the strike and job action and the strike itself is a factor that exists.

The text material covers the process of dispute settlements through the help of mediators and fact finders. The table of contents is arranged in such fashion that each section is usable in training workshops. It is also a ready reference guide for the individual who is at a beginners level or is looking for a starting place for more intensive reading. A discussion leader who is experienced in impasse procedures can use the table of contents as modules in almost any combination as a starting point for a workshop outline, a beginning text and as a springboard for discussion among participants.

The material in this manual was tested at a three-day residential conference. The format was a series of panel discussions. The lead presentors were experienced mediators or fact finders. The reactors in the panels were mediators and representatives of various teacher's organizations and school board organizations as well as members of various state public employment relations commissions. At the Harrisburg Conference there were about forty participants. After the workshop discussions the groups were divided into three sections. Each section then divided itself into two teams and selected a spokesman. The simulation exercise which is part of this manual was then tested. Each team was asked to assume that it had reached impasse and was in mediation. The mediator assigned to the team worked with the groups until there was settlement or deadlock. We then asked that the mediator change his role and function and act as a fact finder.

For purposes of the simulation exercise two spaces are required for each team. There has to be a negotiating room and a caucus room per space. When there is a caucus or the mediator wishes to talk to one side, the one group can remain in the negotiating room and the other group can go to the other space or designated area.

It is imperative for the success of the exercise that the person who is the third party neutral is in fact experienced in mediation or fact finding. The personnel of the Federal Mediation and Conciliation Service, and the various state mediation boards or public employment relations boards or commissions are all available on reasonable notice to supply experienced people for training purposes. In addition the American Arbitration Association, the Federal Mediation and Conciliation Service and the various state public employment relations boards and commissions all maintain lists of persons who are skilled as third party neutrals and whose services are available for training purposes. The suggested workshop outline as follows can be modified by the user to serve his individual needs. It substantially follows the workshop outline tested at the Harrisburg Conference.

It is designed as a three-day conference. That is eighteen hours of presentation. The material can be modified by eliminating or adding. If the workshop is a residential workshop it is suggested that the evenings be used for unstructured discussion groups. If the training program is on an elementary level a training film might be used to advantage. A list of most of the available training films in the public sector is included in part three of the manual. If the group being trained is at mixed levels the training films might be available as optional portions of the program and the evening.

The text portion was prepared by Dr. William Weinberg, Professor of Industrial Relations of the Institute of Management and Labor Relations, Rutgers, The State University of New Jersey and Arnold Zack, Esq., Labor Arbitrator, from the material presented at the Harrisburg Conference and edited by Ernest Gross, Institute of Management and Labor Relations, Rutgers University. The collective bargaining game was developed by Barbara Howley, Administrative Assistant, Public Education Department of the Institute of Management and Labor Relations, Rutgers University. The bibliography and information material was prepared by Marjorie Watson, Information Specialist, and Bernard Downey, Director of Information Services, Institute of Management and Labor Relations Library. Editing was done by Hope M. Fead of the Office of Editorial Services, Department of Educational Media, University Extension Division, Rutgers University. The overall responsibility of any shortcomings are to be attributed to the undersigned Chairman of the Public Education Department of the Institute of Management and Labor Relations, Rutgers, The State University of New Jersey. IMLR is a component of the University Extension Division of Rutgers, The State University of New Jersey and is celebrating its 50th continuous year of adult education.

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IMPASSE IN PUBLIC SCHOOLS
SUGGESTED 3 DAY WORKSHOP

A. What is Mediation
What is Fact-Finding (time block 1 hour)

Readings: Pages 3-42 and 71-75

B. Tactics and Techniques of Mediation (time block 4 hours)

Readings: Pages 44-70

1. Procedural Role of the Mediator

   Initiating Mediation

   Timing

   Time Block 1 hour

   Readings: Pages 44-51

2. Chairing

   Scheduling and the Control of Time

   Location

   Joint and Separate Mediation Sessions

   Time Block 1 hour

   Readings: Pages 53-56

3. The Caucus and Its Function

   The Off-the-Record Meeting

   Committee Size

   Subcommittees

   Notes and Records

   Spinning Off Issues

   Time Block 1½ hours

   Readings: Pages 58-63

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4. How to Use a Mediator

Pointers For Negotiators When In Mediation

Time Block 1 hour

Readings: Pages 63-67

C. Fact Finding (time block 2 hours)

1. Who are the fact finder
2. Preparation of the Case
3. Pre-Hearing status of Negotiators
4. Role of the Prior Agreement
5. Data Development

Readings: Pages 71-87

D. Simulation Exercise

The group divided into smaller groups for role playing session in impasse mediation and fact finding.

Time Block 6 hours

Readings: Pages 94-122

No specific time is assigned to either the mediation or the fact finding game. One should flow into the other. In the event that any group finds that it settles in mediation and therefore does not feel fact finding is necessary, the time might well be spent in discussion of how the matter could have been presented to a fact finder. It is advisable to have the entire group reconvene about a half an hour before the end of the allocated time for a report session where each group can share with the others its experiences.

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MEDIATION AGENCIES AND LAWS

Mediation and the Parties

Almost all mediation is a government service provided by agencies at the federal, state, and, in a few circumstances, the local level. Mediation is the legislated dispute settlement procedure that fits most comfortably into free collective bargaining. It is a government function that provides a specialist to assist labor and management to reach their own settlement in their own way. It is based on a meeting of minds; the parties in collective bargaining may reach their own agreement through negotiations as a result of conflict, pressure, compromise, and accommodation.

Mutual agreement is the cornerstone of collective bargaining. It is the mediator's function and goal to aid the parties to reach their own understanding.

Mediation is part of the free collective bargaining system with an emphasis on voluntarism. That is, labor and management together will devise their own procedures for the settlement of collective bargaining disputes. Almost all of the mediation legislation recognizes that the process belongs to the parties, and therefore mediation is a relatively uncomplicated procedure. Even though mediators may have the right to intervene, their ability to function effectively is based on acceptance by the parties. It is the labor and management officials at the bargaining table who set the tone for the negotiations and provide the limits for the media-

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*In this paper reference is made to the remarks of the following people who participated in the Harrisburg Conference: Jack Bertolino, New Jersey Education Association; Donald Doherty, Federal Mediation and Conciliation Service; Bruce Taylor, New Jersey School Board Association; Jeffrey Tener, Executive Director, Public Employment Relations Commission; Herman Torosian, Commissioner, Wisconsin Employment Relations Commission; Willian Weinberg, Research Professor, Institute of Management and Labor Relations, Rutgers University; Arnold Zack, arbitrator and consultant. These people participated in several panels on mediation agencies and techniques.

tion function. A creative mediator may do wonders in achieving a settlement, but he always operates within the frame of reference and limits established by the parties. Mediation is part of a dispute settlement procedure provided by the government to help labor and management to reach their own agreement.

U.S. Conciliation Service

The U.S. Conciliation Service was established within the Department of Labor in 1913 as part of the reforms established by President Woodrow Wilson. Its function was not fully accepted, nor was its competence obviously apparent. Most labor disputes, until the 1930s, were dominated by the recognition issue, which served as a barrier to the acceptance of peaceful dispute settlement procedures. Mediation does not fit comfortably into negotiations centered on recognition issues. Mediation functions best when the parties have already established a bargaining relationship and then the third party may help them resolve their differences over specific conditions of employment.

World War II and the War Labor Board procedures brought a crisis to mediation. The need for neutrals increased precipitously. The conciliation service was under intense stress both because of the volume of disputes and because of concern for the agency's competence.

National Mediation Board

In the 1920s the railways and their unions fashioned their own dispute settlement procedures which were then enacted by congress. The aftermath of the federalization of rail transportation during

World War I, the initial impact of the recession of the early twenties, the rapidly increased competition of the automobile, and the financial insecurity of the railroads all served to encourage the rail companies and their unions to devise their own dispute settlement procedure, which included government mediation. The agreement among railway labor legislation is unique. No other segment of American industry devised its own procedure until the ill-fated attempt by the construction industry in 1975-76. The construction industry and its unions agreed on a dispute settlement procedure, but it was vetoed by President Ford because of common situs picketing provisions in a companion law.

State Mediation Agencies

Some states established dispute settlement procedures in the nineteenth century. The first was Maryland (1883), quickly followed by New Jersey (1884). These early state mediation functions generally were within an "arbitration" law. Although the act may have provided for the arbitration of labor disputes, it also established an agency or board to provide a mediation function. In the nineteenth century the term "arbitration" was used often to describe a dispute settlement procedure that aided the parties to resolve their own disputes, so that "arbitration" was often used to mean mediation, or indeed, may have been used simply to identify the negotiations between labor and management. The very act of negotiations was often identified as "arbitration" because the parties were in discussions aimed toward seeking a settlement. By World War II many states provided full mediation services. They included Wisconsin, New York, New Jersey, Michigan, Pennsylvania, Massachusetts, and Connecticut.

City Mediation Agencies

Some cities provide dispute settlement procedures including mediation. In the 1930s, during the New Deal period of rapid expansion of organized labor, Toledo, Newark, New York, and Philadelphia provided effective third-party participation under city auspices. Toledo served as a model for other cities. In 1937 Newark established a labor board influenced by those of Toledo and Philadelphia. The New Jersey State Board of Mediation, which was established in 1941, was an outgrowth of the Newark agency. In fact, the Newark agency was turned into the New Jersey State Board of Mediation. The city agencies attempted to settle all labor disputes, including recognition as well as contract disputes, but only the mediation function as applied to contract negotiations proved viable.

Mediation as Part of Wartime Controls

During World War II the function of mediation expanded, was dramatized effectively, and established itself as an integral part of dispute settlement. The National Defense Mediation Board was established in 1940. It was a tripartite board governed by representatives of labor, management, and the public. It was charged with establishing wage restraints and controls; this directed the flow of manpower into war industries and provided the stability for production. The mediation of disputes provided the vehicle for establishing wage restraints and for minimizing labor disputes. The National Defense Mediation Board was succeeded in 1942 by the War Labor Board which maintained the same tripartite structure. It was charged with providing wage controls and its tripartite dispute settlement procedure was based on mediation to be provided either by a state or a conciliation service mediator. But the board itself then attempted to settle the difficult unresolved disputes through its own mediation, even though mediation may have failed at other levels.

The most important single contribution to dispute settlement practices during that period was that management and labor learned to work together. Through the use of the tripartite agency, key management and labor officials learned to respect each other, and more important, learned to deal with each other. It became commonplace to have informal, direct, and off-the-record conferences. As the parties accepted the function of mediation, third party dispute settlement became an integral part of collective bargaining.

Taft-Hartley Procedures

In 1943 the Smith-Connolly Act provided for a Thirty-day notice by the parties to the U.S. Conciliation Service before a contract expired. It had other provisions which greatly limited the recourse to strike during the war, provided for an anti-communist oath, and other aspects that eventually became part of the Taft-Hartley Act. This was the first federal law that provided mandatory procedures for access to mediation. Most states did not have mediation agencies but the industrialized states as Connecticut, New York, New Jersey, Pennsylvania, Michigan, and California had very effective professional mediation services available to the parties. At that time the states provided much of the third-party dispute settlement assistance. The enactment of a mandatory thirty-day notice to the U.S. Conciliation Service forced what had become a rather moribund agency into a much more active participation. It also threatened the state agencies which had no notification procedure.

Jurisdiction

The enactment of thirty-day notice provisions as part of the 1943 Smith-Connolly Act directly established a jurisdictional problem between state dispute settlement agencies and the U.S. Conciliation Service. The state agencies lobbied for federal recognition of their contribution through the establishment of their jurisdiction by law. These efforts were received rather sympathetically by a broad spectrum of legislators because it was generally recognized at that time that some of the state agencies provided more effective service than the conciliation service. The Conciliation service was subject to much criticism for its lack of effectiveness, the less than dramatic level of competence of its personnel, and perhaps more unfairly, the willingness of the parties to blame their failures to reach agreement on the neutral agencies.

After World War II the state agencies lobbied to restrict the jurisdiction of the federal dispute settlement agency and to provide the same notice provisions to all mediation agencies rather than just to the conciliation service. The legislators who were for collective bargaining and were for protecting the better state agencies were joined by others who were against collective bargaining and simply wanted to weaken the conciliation service. They were successful.

The Taft-Hartley Act [203(b)] provides: first, that the Federal Mediation and Conciliation Service should avoid disputes "which would have only a minor effect on interstate commerce..." and, second, that the federal mediation service is to mediate only if a "substantial interruption" is found. These distinctions are very important because in almost every other jurisdiction case the line of jurisdiction is simply on the basis of interstate commerce. Almost all manufacturing and much of the service industries are under the jurisdiction of the National Labor Relations Board (NLRB). There is less and less for a state labor board to do in the private sector, as the NLRB broadens its jurisdiction. But in mediation the legislation purposely was drawn to provide for a vital mediation service on the local level through the state agencies.

This jurisdictional problem between agencies has resulted in overlapping functions, dual mediation provided by two different agencies, and the interagency rivalries. As a result of some bureaucratic abuses and excesses, the state agencies and the Federal Mediation and Conciliation Service have agreed to procedures to minimize the abrasive effects of competitive agencies. This generally has been done under the auspices of the Association of Labor Mediation Agencies.

National Emergency Dispute Settlement Provisions

The National Labor Management Relations Act (Taft-Hartley, 1947) established procedures to regulate "national emergency disputes" identified as those disputes that affect national health or safety and they were also related to industry-wide negotiations.

First the president may direct the attorney-general to petition any district court to enjoin a strike for sixty days. This action may be appealed through the federal courts. After the injunction has been applied the parties must bargain and should use mediation under the auspices of the Federal Mediation and Conciliation Service (FMCS). The parties do not have to accept the mediator's proposals.

The board of inquiry is recommended and, after the sixty-day period, summarizes the issues.

The NLRB has a fifteen-day period in which to conduct a vote on the employer's last offer. There is a five-day period for the NLRB to certify the results to the attorney-general. Regardless of the vote, the attorney-general shall move to have the court discharge the injunction.

The union, though, has the right to strike.

The only action possible is legislation by congress.

This procedure is a combination of fact-finding, mediation, and a vote on the employer's last offer. Mediation is provided by the FMCS and the fact-finding panel may attempt to adjudicate the dispute, although that aspect is not provided in the law. An injunction may halt strike action for a maximum of eighty days. The strike is permitted after that period is exhausted. Congress has not demonstrated a willingness to explore the legislation of private conditions of employment in disputed circumstances.

Federal Mediation and Conciliation Service

The director of the agency is appointed by the president. The agency was separated from the Department of Labor at the time of the writing of the Taft-Hartley Act (1947). It was believed to be undesirable to have the federal neutral dispute settlement agency dominated by the secretary of labor, whose appointment as a member of the cabinet has political ramifications that need not be transferred into a mediation agency. It also marked some uneasiness with the strong personality of John R. Steelman who had been in the labor department, functioned with the conciliation service, and then became a very powerful presidential assistant to President Harry Truman. John R. Steelman was a superb mediator and was used to settle major national disputes, similar to Secretary of Labor Usery now. Although it was decided to separate the agency from the Department of Labor, the mediation service continued to remain physically in the Department of Labor building (only last year the physical separation was effectuated when the Department of Labor moved to new quarters.)

The relationship of the agency with the Department of Labor depends very much on the personality of the Secretary of Labor. If the Secretary of Labor is comfortable and effective in dispute resolution, he may tend to play a strong role with respect to federal mediation services. For example, it is expected that Bill Usery, former director of FMCS will continue his dispute settlement role which has been so dramatic now that he is Secretary of Labor.

The federal mediation service is organized on a regional basis with a full-time staff of about 300 mediators. A panel of arbitrators, consisting of private professionals paid by the parties, is maintained as a service.

It is important to note that the establishment of the Federal Mediation and Conciliation Service in 1947 marked congressional recognition that labor-management dispute settlement must be professionalized.

Other Mediation Agencies

Mediation is provided as part of the railway labor act dispute settlement procedures by the National Mediation Board. The Atomic Energy Commission also has labor-management relations panel. The Equal Employment Opportunity Commission maintains a conciliation function as part of its administrative and dispute settlement procedures. The National Labor Relations Board, although it does not provide a formal mediation procedure, does have a mediation function within its purview. For example, its officials often aid the parties in working out a consent election agreement or other consent agreements. The process of aiding the parties to agree to a procedure for adjudicating differences in representation, or unfair labor practices charges, or on other matters, is a mediation function, even though it is under the guise of an administrative hearing.

The American Arbitration Association has provided, from its panel of arbitrators, experts who can mediate effectively. They have performed some experimental pioneering work in establishing dispute settlement procedures for community disputes, higher education, landlord-tenant, and other problem areas.

There is an experiment with environmental dispute settlement which has been in existence for several years. It was based originally at Washington University (St. Louis) but is now at the University of Washington (Seattle).

THE FUNCTION OF THE MEDIATION AGENCY, ITS EFFECT ON THE TYPE OF MEDIATION SERVICE, AND THE AGENCY GOALS

There are three types of mediation agencies. First, there are those that see themselves as an extension of the collective bargaining process; second, those that function as an arm of government; third, those that vacillate between both.

If an agency sees itself as part of the collective bargaining process, it tends to identify the function of the mediator rather closely with the needs of the parties and within the dimensions established by labor and management. For example, the agency operates within the frame of refernce already established by the parties and the mediators tend to help the parties reach a settlement of their dispute based on their own terms. Mediation within a framework of free collective bargaining establishes mediation as an extension of free collective bargaining. It is an aspect of private decision making, with the mediator functioning as a servant of the parties.

The second type, the agency that sees itself as an arm of government, generally establishes agency goals or has them established by government and influences the function of the mediator in terms of those goals. An agency that sees itself as an arm of government will be influenced strongly by public policy. For example, if public policy demands restraints on salary increases because of inflation, then the function of the mediator is not primarily to help the parties settle the contract on their own terms and in their own way, but to urge upon the parties a settlement that would reflect the limits of governmental restraints. An example of this may be seen in the activities of the Federal Mediation and Conciliation Service during the period of governmental restraints and guidelines in the early sixties. Mediation as an arm of government is a form of government regulation of collective bargaining. The mediator is a servant of the public; the goals of the parties must be subordinated to the public good. Mediation functions as a substitute for collective bargaining.

There is a third group of agencies--those with no policy. They vacillate between both types of goals.

Some criteria which may be used to identify characteristics of mediation agencies and to aid in categorizing them either as an extension of collective bargaining or as an arm of government are listed below:

(1) timing of the mediator's entry into the case;

(2) use of preventive mediation;

(3) advocacy of economic controls or guidelines;

(4) reliance on a political role.

Agencies also have functional goals. There is no question that impartiality is a very major and crucial aspect of mediation. It looms so large that it necessitates little discussion because it is so obvious to all.

Connected with impartiality is the concept of integrity. Mediators must be honest and must exude the appearance of integrity and must demonstrate the substance of integrity.

Mediators must also have a high degree of objectivity. They must be resourceful and able to generate and explore alternatives.

Not only should they be objective, but they must also be willing to recognize the validity within many different positions and be reluctant to be pinned to a preconceived point of view by any of the parties. Above all, the mediator must maintain the interests of the parties. It is their problems that become his concern. "...mediators must believe there is an underlying mutual interest aspect of collective bargaining..."[1] "Most mediators believe that they are responsible to the parties, that is, they see mediation as an aspect of the relationship of the parties themselves."[2]

Most mediators also have a high degree of enthusiasm for mediation, collective bargaining, and life itself. They are generally outgoing and gregarious, perhaps marked by personal restraint, but functioning with enthusiasm. There is also the aspect of professionalism. This has been furthered by the Association of Labor Mediation Agencies. Most agencies strive for an increasing regognition of mediation as a professional activity.

Agencies also have goals established by laws that are concerned with maintaining labor peace, lessening strike loss, making settlements easier for the parties, servicing the parties and aiding them to develop dispute settlement procedures, and protecting the public interest and welfare.

Criteria for Identifying the Agency's Goals

Timing

Most of the literature on mediation calls for the entry of the mediator at a point late in a dispute when the parties have exhausted themselves and have reached their limits of agreement making.[3]

The Federal Mediation Service is more inclined to intervene. State mediators as a group favor mediation at an impasse, rather than early intervention.[4] An arm of government agency would be inclined to monitor the relationship of the parties during the life of a contract in order to promote better relationships. This may be done as an aspect of preventive mediation. An arm of government agency would be more inclined to initiate mediation efforts at the beginning of negotiations well before an impasse is reached. An agency that sees itself as a continuation of the collective bargaining process will favor mediation only at the time of crisis toward the end of the contract negotiations period.

Preventive Mediation

This is closely related to timing. The notion of preventive mediation--that the mediator and the mediation agency could provide consultation, programs, or participation with the parties during the life of the contract in order to promote a better relationship between the parties--is a concept that fits closely to the arm of government agency. Preventive mediation may be on a year-round basis. It may come early in the negotiations, or it may be manifest in aiding the parties in grievance dispute settlement. The mediation agency that sees itself as part of collective bargaining would avoid participating in preventive mediation, assuming that this was an area for private consultants working at the behest of the parties. It would advocate that mediation would be most effective if used sparingly and only at the time when parties were under crisis toward the end of their negotiating period.

Economic Controls

This is perhaps the clearest manifestation of the mediation agency that sees itself as an arm of government. This agency would participate in a control program. If guidelines for salary increases are established by government policy to stabilize the economy, then this agency would expect its mediators to generate settlements within those guidelines. For example, in the early sixties when the government established a goal of 3.2 per cent wage increases, the Federal Mediation Service urged its mediators to try to get settlements within that limit.

A collective bargaining mediation agency would view this as not being within the role of the mediator. Such an agency would expect the mediator to get the parties to come to their own agreement. If a possible settlement appeared above a guideline level, it would be a problem for the parties rather than the mediator. The mediator might bring the problem to the attention of the parties, but he would not try to force the parties to live within the guidelines established by another segment of government. The mediator would function within a framework of free collective bargaining in which the parties were free to come to their own conclusions. Dispute settlement would be seen as part of a private decision-making procedure rather than as a government process.

Political Role

It is probable that an agency that sees itself as part of the collective bargaining process would play a more neutral role in relationship to the political structure of government. It is probable that an arm of government agency would be more responsive to the legislative and executive branches in attempting to work out settlements which might be more in keeping with government goals.

STATE PROCEDURES AND STATE AGENCIES

State dispute settlement procedures have a rich variety of differences, a wide range of employee coverage, an unfortunate inconsistency of agency competence, and a vitality of experimentation that fulfills the promise of the federal system that states have the freedom to explore, experiment, and be inventive.

Some state agencies deal with dispute settlement in both the public and private sectors and also handle the problems flowing from union organization and recognition (Wisconsin; Michingan is occasionally cited as an all-encompassing agency, but it should be noted that Michigan state employees do not have full rights of collective bargaining because of constitution limitations).

A large number of agencies provide dispute settlement procedures and services for either the private sector of the public sector. For example, the New Jersey State Board of Mediation functions entirely in the private sector and the New Jersey Public Employee Relations Commission is limited to the public sector. The same holds true for the State of New York and a large number of other states.

Other agencies are limited only to the administrative function of providing elections, regulating union recognition, determining units and the conduct of the relationship of the parties in collective bargaining. The best example of this is the pacesetting National

Labor Relations Board. Many states have their own labor relations boards limited only to the private sector (for example, New York Labor Relations Board). Finally there are those agencies that are limited only to dispute settlement, regardless of whether it is public or private, and do not get involved in problems of recognition either through informal procedure or a consent election procedure (Pennsylvania Mediation Board).

Therefore, any training program or any model developed must take into consideration the particular state, its agencies, how they relate to each other, and how they relate to the Federal Mediation and Conciliation Service, and especially their relationship with the National Labor Relations Board. For example, in Florida the public dispute settlement function is performed by the Federal Mediation and Conciliation Service for the Florida Public Employment Relations Commission.

Agencies, Procedures, and Mediation

In the private sector the relationship of the agencies, procedures, and the parties is relatively simple. The National Labor Relations Board is primarily concerned with establishing the relationship between the parties, that is, with election procedures, determination of units, and the conduct of the parties toward each other. State or federal mediation services are charged with getting the parties to reach their own agreement under their own procedures. The parties give each other proper notice of the opening of negotiations sixty days before the contract expires, notify all available mediation agencies thirty days before the expiration of the contract, and deal with each other in good faith, avoiding the designated unfair labor practices. Those are the legal obligations. Almost all other aspects of their relationship are entirely voluntary. Most negotiations are conducted by the parties without recourse to third party assistance. In the private sector, the relationship is bolstered by the need of labor and management for industrial peace as manifest by the threat of a strike.

Agreement is designated by the signing of a contract. This characteristic of American bargaining, negotiating within a contractual framework, is unique. It provides an annual period of peace in which the parties live under the agreement and settle disagreements themselves, under their own grievance procedure. If they should fail to reach an agreement over the interpretation of the contract, the parties usually agree to arbitrate.

Contract negotiations themselves are rarely submitted to arbitration. The ordinary form of dispute settlement is the possible assistance of a mediator. National emergency disputes are exceptions; they have their own special procedure, if the president finds there is a emergency. All other negotiations are conducted by the parties, free of the impediment of government procedures except for the notification requirements of Taft-Hartley.

In contrast, the public sector takes much of what exists in the private sector, but the situation is complicated by some added procedures. The basic relationship is also more complex.

In the private sector there is rarely a problem of the location of authority. The employer is obvious, visible, and apparent to any union observer. But in the public sector the diffusion of authority is a major characteristic of collective bargaining. Public entities may have complete power in the direction of their employees, but may be quite limited as to the source of their funds. They may be dependent fiscally on another agency. For example, in a system of higher education a university may be governed autonomously, but a significant amount of university funds may come from the state treasury. This may involve the executive branch of the government. But, if the funds are appropriated by the legislature they may activate interest on the part of the legislature. The county welfare department may be run almost exclusively by the county, but its source of funds may be state and federal. The examples are multitudinous.

Although most public jurisdictions do not allow a strike, a few allow a strike under limited circumstances. The absence of the ability to strike makes for a sponginess of negotiations. Public sector bargaining is often characterized by extended negotiations, a series of false deadlines, or an absence of deadlines and a seeming inability on the part of the parties to conclude an agreement. The terminal point is elusive. This is due to a combination of the absence of the ability to strike, the diffusion of authority, and the difficulty of dealing with problems that may increase costs when the source and amount of future income is not clearly established.

Most states have various procedures for dispute settlement that go beyond the mediation stage. The strength of mediation in the private sector is that the parties realize that a strike occurs if there is a failure of agreement. But in the public sector, in the absence of the possibility of a strike, public jurisdictions have devised procedures to replace or to approximate the strike pressure.

The most popular and widespread terminal point is fact-finding. The imposition of fact-finding, compulsory arbitration, or any of a host of other variations has served to weaken the effectiveness of mediation. Mediation has become a way station on the road of dispute settlement. The absence of the possibility of a strike and the use of other procedures makes mediation less effective in the public sector than in the private sector.

A SURVEY OF STATES*

Most states with public sector bargaining laws have a mediation function whether it is provided by the agency, the department of labor, or some other agency. Mediation is the most common dispute settlement technique and procedure. Most industrialized states have mediation agencies. As noted before, some are devoted to both public and private sectors, others are limited to one sector or the other.

To summarize, mediation is less effective in the public sector because of the absence of the possibility of a strike and because there are procedures for dispute settlement beyond the mediation level, such as arbitration or fact-finding. The complication of the diffusion of authority combined with the weakening of the mediation function is manifest in a loss of self-reliance by the public sector parties. In the private sector, dispute settlement is simple and direct, as is the bargaining. Mediation functions effectively because of the threat of a strike; there is no other alternative.

Mediation fits most closely to the collective bargaining process, but it does not function as well in the public sector. That is not to say that mediation is not a useful tool. It still remains the most commonly used dispute settlement procedure and in terms of volume of

* The New Jersey Public Employer-Employee Relations Study Commission Report to the Governor and the Legislature (1976) studied all aspects of dispute settlement in the states. Their charts (prepared by Robert Gidding) are included. Some may be used with the arbitration manual. The most relevant for this manual are the charts on arbitration, fact-finding, and the right to strike.

activity it is still probably the most effective. That is, more parties use mediation as a dispute settlement procedure and more agreements are reached under mediation auspices than under any other procedure.

A Comparison of State Experience

Twenty-eight states now provide for some type of mediation; it is the most-used procedure. Most states provide mediation either through a specific mediation agency, a similar agency such as a public employment relations commission, or sometimes the function is within another government agency, such as a labor department. Most states have filing procedures tied to contract expirations or budget deadlines, so that mediation agencies are notified. Most states in the public sector have fact-finding as the step beyond mediation and it is almost always the final step of the dispute settlement procedure. The use of compulsory arbitration, especially of the final offer, is a current trend. It spread in the 1970s primarily to uniformed personnel--police, fire, and correction officers. It is possible that the combination of recession and the need for finality may encourage the growth of compulsory arbitration in the public sector.

Mediation is most useful and effective when the parties are faced by the alternative of a strike. Mediation is not as effective in the public sector in the absence of a strike threat and in the presence of other terminal procedures, such as compulsory arbitration.

Chart A-1 Provisions of State Laws Concerning Compulsory Arbitration of Interest Disputes

State	Categories of Employee Covered	Who initiates Arbitration	Single Arbitrator or Tripartite Panel	Type of Arbitration[1]		Parties Permitted choice of procedure	Can Mediation[2] Occur
				Convent.	Final Offer		
Alaska	Class 1[3] Class 2	automatic[4] automatic after strike injunction	n.a.[5]	X		n.a.	n.a.
Conn.	all municipal[6]	automatic	tripartite		issue by issue	no	yes
Ind.	a. police & fire[7]	automatic	tripartite	X		yes	
	b. other public employees	voluntary	3 persons		package[8]	yes	no
Iowa	a. all state employees	either party	1 or tripartite		issue by issue[9]	yes	yes
	b. firemen	either party	tripartite[10]		issue by issue	no	
Maine	municipal, state & univ. empl.	either party	tripartite	X		yes	yes
Mass.	police & firemen	automatic	tripartite		package	no	yes
Mich.	police & firemen	either party	tripartite	X	issue by issue[11]	no	yes
Minn.[12]	state empl.	both parties must agree	1 or tripartite		package	no	yes
Neb.[13]	all inclusive	parties & state	all public	X		no	yes

Provisions of State Laws Concerning Compulsory Arbitration of Interest Disputes

State	Categories of employee covered	Who Initiates Arbitration	Single Arbitrator or Tripartite Panel	Type of Arbitration		Parties Permitted choice of procedure	Can Mediation Occur
				Convent.	Final Offer		
Nev.	local government	governor[14]	1 person	n.a.		no	n.a.
N.Y.	police & firemen	either party	tripartite	X		yes	yes
Okla.	police &	automatic	tripartite	X		no	n.a.
Ore.	a. police & fire	either party	single or tripartite	X		no	n.a.
	b. all state empl.	either party[15] or bd. injunc.	tripartite	X		no	no
R.I.	a. state	automatic	single	X		no	no
	b. mun.	automatic	parties may agree to any number	X		no	no
	c. police & fire	automatic	tripartite	X		no	n.a.
Pa.	court attendants, prison guards, police, fire	either party	tripartite	X		no	yes
S.D.	police & fire	either party	tripartite	X		no	n.a.
Wash.	uniformed services, comm. coll faculty, other[16]	automatic	tripartite	X		no	n.a.
Wis.	firemen	either party	single		package	no	n.a.

Notes to Chart A-1

1. In conventional arbitration the arbitrator(s) fashion his own award, modifying the positions of the parties as he wishes. Final offer refers to a procedure in which the arbitrator(s) must choose between the last offer of each party. Package means that the arbitrator must choose the position of one side in its entirety without modification.

   In issue-by-issue arbitration the arbitrator chooses the position of one side or the other on each item in dispute.
2. Some laws provide that mediation may occur after arbitration hearings have commenced, the so-called "med-arb" approach. The arbitrator(s) under some statutes may remand the dispute back to the parties for further negotiation.
3. Alaska divides its employees into three classes:

   Class 1: police, fire, guards, hospital employee;
   Class 2: public utilities, snow removal, sanitation, teachers;
   Class 3: employees not included in classes 1 and 2.

   The details of the arbitration procedure are not found in the collective bargaining law. Class 1 is forbidden to strike and hence must go to arbitration. Class 2 may strike but must undergo arbitration on issuance of an injunction.
4. Automatic means that arbitration is automatically invoked after a certain number of days of impasse in negotiations.
5. n.a. means that the statute is silent on the subject.
6. Some laws provide that the parties may agree upon their own impasse procedure.
7. Except certified employees of school districts, university faculty confidential employees, and municipal-county health and care institution employees.

8. If either party notifies the other that it desires that the fact finder's report be binding, the report becomes binding (S.11).

9. The arbitrator may choose between three positions: the final offers of each party and the fact finder's recommendations.

10. Appointed by district court.

11. Economic items are decided by the final offer, issue-by-isssue method. Non-economic items are decided by the arbitrator(s).

12. Minnesota's statute mentions final-offer arbitration, but does not mandate arbitration except by petition agreed to by the employer. Included are employees of the University of Minnesota, state and junior colleges, and school districts, but employees of charitable hospitals are excluded.

13. Nebraska is unique in that it has a Court of Industrial Relations whose orders are binding on the parties. The court performs arbitration of impasses and decides other matters as well.

14. The parties, upon joint agreement, or the governor, at the request of either party, may make the fact finder's report binding. In Indiana the parties may agree to make the fact finder's recommendations binding.

15. Public employees, other than policemen and firemen, have the right to strike. If a court enjoins the strike, the dispute is automatically referred to arbitration.

16. State university staff and support employees and port district employees.

Chart A-2 PROVISIONS OF STATE LAWS PERTAINING TO THE STRUCTURE OF STATE PUBLIC EMPLOYER RELATIONS AGENCIES[1]

State	Title	No. of Members	All public or tripartite	Members Full-time or part-time	Term of Office	Bipartisan by party	Jurisdiction
Alaska	Labor Relations Agency	3	Public	Part-time	4 years	yes	Public and private Sectors
California (effective July 1, 1976)	Educational Employment Relations Board	3		Full-time	5 years		Teachers
Connecticut (effective Oct.1,1975)	State Board Labor Relations	3	Public	Part-time	6 years	no	Municipal employees
Florida	P.E.R.C.	5	Public	Chairman-full-time Members-part-time	4 years	no	Public sector
Hawaii	P.E.R.B.	3	Tripartite	Full-time	6 years	no	Public sector
Indiana (effective July 1, 1975)	Education Employment Relations Board	3	Public[2]	Chairman-full-time Members-part-time	4 years	yes	Public sector
Iowa	P.E.R.B.	3	Public	Full-time	4 years	yes	Public sector

PROVISIONS OF STATE LAWS PERTAINING TO THE STRUCTURE OF STATE PUBLIC EMPLOYER RELATIONS AGENCIES[1]

State	Title	No. of Members	All public or tripartite	Members Full-time or part-time	Term of Office	Bipartisan by party	Jurisdiction
Kansas	P.E.R.B.	5	Tripartite	Part-time	4 years	yes	Public sector
Maine (effective Oct. 3, 1975)	Labor Relations Board	3[3]	Tripartite	Part-time	4 years	no	Public and private sectors
Massachusetts	State Labor Relations Commission	3	Public	Full-time	5 years	no	Public and private sectors
Michigan	P.E.R.C.	3	Public	Half-time	3 years	yes	Private and public sectors excluding state employees[6]
Minnesota	P.E.R.B.[4]	5	Tripartite		4 years	no	Public sector
Nebraska	Court of Industrial Relations	5	Public	Part-time	6 years	no	Public and private sectors.
Nevada (effective May 18, 1975)	Local Government Employee-Mgt. Relations Board[5]	3	Public	Part-time	4 years	yes	Local government

PROVISIONS OF STATE LAWS PERTAINING TO THE STRUCTURE OF STATE PUBLIC EMPLOYER RELATIONS AGENCIES[1]

State	Title	No. of Members	All public or tripartite	Members Full-time or part-time	Term of Office	Bipartisan by party	Jurisdiction
Vermont	Employment Labor Relations Board Labor Relations Board	3 3	Public Law is silent	Part-time Part-time	6 years 6 years	yes yes	State employees Private sector and municipal employees
Wisconsin	Employment Relations Commission	3	Public	Full-time	6 years	no	Private and public sectors

Notes to Chart A-2

1. This is not an exhaustive list of all state agencies in the United States.
2. Nonpartisan status "does not apply to persons on the teaching staff of a university who are knowledgeable in public administration or labor law so long as they are not actively engaged other than as a member, with any labor or employee organization." (S. 96)
3. For each member the governor appoints two alternates.
4. Minnesota law has established a Bureau of Mediation Services whose director "shall only certify a matter to the board when either or both parties, except for essential employees, petition for binding arbitration stating that an impasse has been reached and the director has determined that further mediation efforts... would serve no purpose" S179.69(3). The director of mediation services handles recognition, unit determination, mediation; conducts elections; and determines the scope of arbitrability. P.E.R.B. decided the outcome of all elections.
5. Nevada law also established an advisory committee to its agency, which consists of two members representing labor and two representatives appointed by the governor. This committee screens potential board members and submits an approved list, from which the governor must choose nominees for board membership. The committee meets at least semiannually to review the procedures outlined in the law and make recommendations for legislative amendments.

6. M.E.R.C. has no jurisdiction over the state of Michigan and its employees. This is due to the state constitution which vests power over the state and its employees in the constitutionally created Civil Service Department and provided that the Legislature may not legislate on labor relations for state employees.

7. The Educational Employment Relations Act is in force except for section four which relates to the creation of the Educational Employment Relations Commission. This section only was vetoed on July 2, 1975 by the Governor.

Chart A-3 IMPASSE PROCEDURE: MEDIATION & FACTFINDING

			Who Initiates Impasse Procedures				
		Med. 1st Step of Impasse Procedure	PERC Initiates Med. on own	Parties Themselves File Impasse Notification	Statute Provides For Step Beyond Fact-finding or Some Substitute	Fact-finding is Last Step	Notes
Alaska	Public Employees	yes	X	X	X		
	Teachers	yes		X	X		Each party chooses 2 persons to serve on a Mediation Board. These 4 choose a fifth. The Board submits findings & recommendations after hearings.
Calif.	Public School Employees	yes		X	X		Either party may declare impasse. Parties may include in their agreement procedures for interest arbitration.
Conn.	Municipal Employees	yes		X	X		Fact-finding is first step (S-8 state employees) if parties have not requeste mediation within 50 days, board shall appoint mediator. Factfinder specifically empowered to mediate.
	State Emp.	no		X		X	
	Teachers	yes		X	X		
Delaware	Public Employees	yes		X			No provision for fact-finding.
	Teachers	yes		X		X	Tripartite mediation panel "shall be formed" if parties cannot agree on mediator
Florida	Public Employees	yes		X (sua sponte)		X	Agency appoints Special Master who performs advisory arbitration if parties fail to appt. mediator. Legislative hearing after fact-finding.

Note: Some statutes allow voluntary arbitration, some compulsory arbitration, as step after fact-finding.

IMPASSE PROCEDURE: MEDIATION & FACTFINDING

			Who Initiates Impasse Procedures*				
		Med. 1st Step of Impasse Procedure	PERC Initiates Med. on own	Parties Themselves File Impasse Notification	Statute Provides For Step Beyond Fact-finding or Some Substitute	Fact-finding is Last Step	Notes
Georgia	Fire	yes	After 30 days negotiations			X	Mediation board (tripartite) used. Mediation Board conducts hearings & issues advisory recommendation.
Hawaii	Public Emp.	yes	X		X		
Idaho	Fire	no	After 30 days negotiations			X	Fact-finding is only step.
	Teachers	yes		X		X	
Indiana	State and Municipal	yes	X	X	X		
	Police & Fire	yes	X		X		
	Teachers	yes	X	X	X		
Iowa	All Emp.	yes		X	X		Parties may agree on own impasse procedure, not necessarily utilizing mediation. Arbitration available to all employees.
Kansas	Public	yes	X	X		X	Parties can include impasse procedure in agreement.
Kentucky	Firemen	no		X		X	Fact-finding is only step.
Maine	Municipal	yes	X	X	X		Standing panel of mediators.
	State	yes	X	X	X		

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*If both boxes are marked, the statute provides that either process may occur.

Chart A-3 (cont.)

IMPASSE PROCEDURES: MEDIATION & FACTFINDING

		Med. 1st Step of Impasse Procedure	Who Initiates Impasse Procedures*		Statute Provides For Step Beyond Fact-finding or Substitute	Fact-Finding is Last Step	Notes
			PERC Initiates Med. on own	Parties Themselves File Impasse Notification			
Maine (cont.)	Univ. Emp.	Parties may waive & invoke factfind.		X	X		
Maryland	Public School	Yes		X			Mediation is only step Provided.
	Municipal	Yes		X		X	Impasse panel Chairman mediates-and impasse panel factfinds.
Mass.	Public	Yes		X	X	X	Arbitra. is voluntary.
	Fire & Police	Yes		X	X		Arbitra. is compulsory.
Mich.	Municipal	Yes		X		X	Board appoints mediator in every case. Factfind. provisions applicable to public sector found in the state private sector statute.
	Police & Fire	Yes	not clear		X		
Minn.		Yes		X	X		Med. sessions must be public except when provided by Director of Med. Bureau. Med. may continue after parties have submitted final positions.
Montana	Public	Yes	After "reasonable period"			X	
Nebraska	Public & Utilities	If parties request	not clear	X	X		Court of Industrial Relations makes Med. available to parties. No mention of med. Factfinding not used. Dispute directly to arbitra.

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* If both boxes are marked, the statute provides that either process may occur.

IMPASSE PROCEDURES: MEDIATION & FACTFINDING

			Who Initiates Impasse Procedures*				
		Med. 1st Step of Impasse Procedure	PERC Initiates Med.	Parties Themselves File Impasse Notification	Statute Provided For Step Beyond Factfind or Some Substitute	Factfinding is Last Step	Notes
Wash.	Municipal	Yes		X	X		
Wisc.	State	Yes	X	X		X	Factfinder can mediate.
	Municipal	Yes	X	X		X	
	Police & Fire	Yes	X	X	X		Parties can set own impasse procedure.
Wyoming	Fire	No	After 30 days negotiating		X	No factfinding	Compulsory arbitration.

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*If both boxes are marked, the statute provides that either process may occur.

RIGHT TO STRIKE PROVISIONS[1] (actual & proposed)

State[2]	Level	Type	Conditions Allowable	Who Determines Threat[3]	Criteria to be considered by Court	Who can apply for Injunction[4]	Compulsory Arb.[5]
Alaska	State	TypeI: police, fire, guards at jails & correctional institutions hospital employees[6] (Type II & III may strike)	After med.[7] upon majority vote of bar. unit (secret ballot)		Total equities, e.i., impact of strike on public and extent to which employee organ. employers have met statutory obligations	Employer or PERC	Yes
Hawaii	State	None	a.if emplyee is included in appropriate bargaining unit with exclusive representation b.if emplyee is part of bargaining unit and has not choses arb. c.exhaustion of bargaining procedure d. 60 days after ff report made public e. 10 day notice of intent of PERC	PERB		PERB	No
Oregon	Mun.	Police, fire & guards in mental hosp. & correctional inst.	a.see Hawaii a,b, e b. 30 days after ff report made public	Court	"equitable relief including but not limited to appropriate injunction relief"		Yes
Vermont[8]	State	State employees (mun. and teachers may strike)	a. 30 days after ff report made public b.if no recourse to arb.	Court		Mun. employer	Yes[9]
Pennsylvania		Guards at prisons, mental hosp. or employees directly involved with and necessary to the functioning of the court of Pa.[10]	Exhaustion of collective bargaining procedure	Court	"including, but not limited to injunction"	Public employer	No

RIGHT TO STIKE PROVISIONS (actual & proposed)

State	Level	Type	Conditions Allowable	Who determines Threat	Criteria to be considered by Court	Who can Apply for Injunction	Compulsory Arb.
Montana		All but nurses	If no strike within 150 miles	Court	"no feasible alt. for protection		
Cal. Study Commission		None	Procedural remedies exhausted: a. direct neg. b. mediation c. tripartite ff d. vote on ff recommended e. reject of ff by one or both parties			Any party or citizen	Yes[12]
Proposed Bill in Ohio		None	If bargaining procedure is exhausted	Board	Court cannot issue w/0 authoriztion being granted by the board to the public employer	Public employer	Yes[13]

Right to Strike Provisions Chart

Footnotes

1. A blank space indicates that the statute is silent on certain issue. All statutes prohibit supervisors (Hawaii, top level supervisors), confidential employees, and elected officials from striking.

2. All provisions prohibit strikes if they threaten health, safety, of public or present "clear and present danger" to health, safety of the public. Alaska goes further and provides criteria for courts' determination of a threat. Pennsylvania, Oregon and the California Study Commission specifically give the court under remedial latitude than the injunction. See column, "Criterial Guiding Court."

3. This question addresses the role of PERC in the injunctive process. In Hawaii and in the proposed bill in Ohio, the petitioner must secure PERC's review of the existence of a threat to public before court review. In other states the petitioner can address the court directly.

4. In Hawaii, PERB must apply for injunction; the California Study Commission would allow any citizen to petition.

5. Some states require arbitration upon issuance of an injunction.

6. Municipal employees and teachers may strike.

7. a. refers to class two employees only: public utility, snow removal, sanitation, public school & other educational institution employees; class three employees, those not in excluded class one or class two, need only secure majority vote.

8. State employees are expressly forbidden to strike (unfair labor practice). The language for municipal employees reads, "A strike shall not be prohibited unless..." The language enabling teachers to strike is more vague: "Any restraining order or injunction issued by a court as herein provided shall prohibit only a specific act or acts expressly determined in the findings of fact to pose a clear and present danger." (S 2010)

9. Within ten days of injunction order.

10. Police and fire are prohibited from striking in a separate statute which also requires arbitration

11. In affixing fine or imprisonment for contempt court shall take into consideration: 1) any unfair practice committed by public employees, 2) extent of defiance, 3) impact of strike on health, safety and welfare, 4) ability of organization or employee to pay fine. Parties are enabled to request diminution or suspension of fines, under "meet and confer."

12. Parties must accept fact finders recommendations.

13. Final offer, item by item.

NARRATIVE on

Right to Strike Provisions Chart

Explanation of Chart

This chart analyses the right-to-strike provisions in the six states which allow strikes as a technique of dispute settlement. The chart includes in addition the strike provisions in two proposed statutes. The purpose is to highlight the range of variation found in strike provisions so as to illuminate the alternatives available in drafting right-to-strike laws.

The first consideration is those classes of employees excluded from the right-to-strike. All other employees are presumed to have the right-to-strike. The classes excluded are broken down into level (whether state or municipal) and type (police, fire, transit, hospital, etc.). The second consideration is the conditions under which a strike is allowable. These conditions are expressly stated in each statute. The third consideration is the agency or court which reviews the situation and has the power to ascertain that a threat to public welfare or a clear and present danger to health, safety, exist. The fourth column shows whether or not the statute provides for compulsory arbitration in the event of an injunction. The fifth column considers any criter imposed by the statute which would guide the court in its decision whether or not to enjoin the strike. Finally the last column identifies the party which is designated by the statutes as the petitioner for injunctive relief.

Summary of Chart

Six states permit the strike by public employees. They range from Hawaii, which exlcuded no class of employee from strike action to Montana, which allows only nurses the right to strike. All states prohibit the strike if it poses a threat to the public safety, health. All states impose conditions, the common one being the exhaustion of remedies contained in the collective bargaining procedures, i.e., direct negotiation, mediation, fact-finding, publicizing fact finder's recommendations, and, in most states a cooling off period. Three states impose criteria to guide judicial review. Two of the six require arbitration as the last recourse in case of injunction. One state, Hawaii, invests its commission with quasi-judicial power in determining the threat to the public. All states except Hawaii and Vermont prohibit their police and firemen from striking.

A List of Alternatives

1. Allow or prohibit police and firemen the right to strike.
2. Require arbitration upon court injunction or allow return to status quo.
3. Limit court's discretion to issuance of injunction or allow court more latitude in devising a remedy
4. a. Require a petitioner for injunction to obtain agreement or PERC before approaching the court or allow a petitioner to petition the court directly, the bypassing PERC.
   b. Allow PERC and/or the employer and/or any aggrieved citizen to apply for injunction relief.

THE MEDIATORS*

About one-fourth to one-third of the mediators are college graduates. The majority do not have degrees, but surprisingly, about 15 to 20 per cent have graduate degrees. That is, although not many mediators have completed college, many of those who have also obtained graduate degrees. From 55 to more than 60 per cent of state and federal mediators do not have college degrees. It should be pointed out that about 30 per cent of them spent some time in college, but did not graduate.

Mediators, characteristically, are not young. There are none under twenty-five, only 5 per cent between twenty-five and thirty-four years of age. Usually state mediators have been younger than federal mediators. One-quarter of the state mediators are between thirty-five and forty-four, but only about 15 per cent of the federal mediators are in that category. The majority of active mediators are between forty-five and sixty-four. A total of 48 per cent of the state mediators and 43 of the federal mediators are between forty-five and fifty-four. But the age bracket of fifty-five to sixty-four contains one-third of the federal mediators but only 20 per cent of the state mediators. Those over sixty-five account for 4 per cent of the mediators, both state and federal.

* This material is based on studies by Chernick and others and is referred to as the Rutgers Study (it was published in 1964) and a Federal Mediation and Conciliation study which was summerized in Simkin. It is probable in the ten years since these studies were made that the age level is lower since agencies have made a concious effort to recruit younger people. There are probably more women and the education level has been rising as the education level of the general population has been improving.

Federal mediators tend to stay longer in the service. Over 50 per cent of the federal mediators had been in the service ten years or more. Close to 60 per cent had been in either mediation or related services, whereas for the state mediators, only about 40 per cent had been either in some kind of dispute settlement activity or had ten years or more of activity in the state service.

Most mediators, about 75 per cent, both state and federal, have been union members at one time or another in their career. About half of these have been paid officials. Most mediators have worked for either union, industry, or government.

If one has to generalize, the typical mediator is probably about fifty, has had close to ten years of mediation experience, and has been a union official, but also has worked for industry and probably has had some government service.

Half the mediators have had fathers who were either owners, managers, or officials of some sort. One-quarter of them had fathers who were skilled workers.

In a survey of attitudes, it was found that most mediators accept unionism and believe very deeply in collective bargaining. They accept mediation as a very necessary function. Most of them see mediation as an "art" that is difficult to transmit, but three-fifths of them think that mediation skills and ability can be measured, and that one can identify an ability to mediate.

Most significant in terms of the relationship of dispute settlement to the parties, labor and management, as well as to the government and the public, 75 per cent of the mediators see their function as being tied to a responsibility to the parties. This has great significance in the public sector, because so often one is confronted by the dilemma of collective bargaining objectives and problems being related to ill-defined public needs or attitudes. It is clear that from the mediator's point of view most of them see their responsibilities as keyed to the parties; they work with the parties, they deal with the parties, they reach agreement with the parties, and the parties are being served.

The Role of the Mediator

Dispute settlement belongs to the **parties**, not the mediator, who generally sees his role as working with the parties. It is important that the mediator have a background which enables him to understand quickly the issues as presented by the parties. Labor and management may not have the time, nor should they need the time, necessary to educate the mediator completely.

Although the terms are used almost synonymously and interchangeably, there is a difference between conciliation and mediation. The act of conciliation is one that brings the parties together. The concept of the role of mediator is more aggressive. The mediator only brings together, but works with the parties to get them to reconcile their differences. He actively proposes alternate solutions and he does his best to get the parties to explore them. According to the Rutgers Study the source of the mediator's power ultimately is in the parties themselves. He cannot substitute his personality or persuasion for the underlying power that the parties have. Mediators like working with people, have a sense of humor, are storytellers, have patience, and have a passion for problem solving.[5]

Don Doherty emphasized that the mediator must develop his acceptability with the parties, and that acceptability must include all the parties, not just the leaders.

Arnold Zack pointed out that the mediator should be able to work with the committee especially to sell a settlement. The leader may not be able to do this alone. The mediator's acceptability and competence is demonstrated through his discussion of the issues. He must demonstrate his knowledge of the substance of the dispute, as well as the procedures.

An important function for the mediator is the codification and clarification of issues by putting them together.[6] It is a process of structuring and restructuring in which the way the issues are clustered may be an important factor in reaching agreement. The mediator may aid in the discovery of creative solutions to matters that initially were thought to be sources of serious conflict. This may be viewed as the mediator encourageing the search for alternate solutions.

It is important for the mediator to press for a viable compromise in the case of real and persistent conflict between the parties. When the parties have a fundamental dispute, the mediator should press for some solution that might be an accommodation of interests.

Last of all, an important observation by Simpkin, is that a mediator may have to assume, as one of his obligations, the acceptance on the part of one or both parties of the advisability or necessity of a complete capitulation on an issue in view of the alternatives. He may press for a viable compromise, but he may also press for complete capitulation. In the private sector the alternative may well be a strike. That may be more costly than surrender of a particular issue. The mediator should get the parties to weigh the alternatives and to make a rational decision based on reality.[7]

TACTICS AND TECHNIQUES OF MEDIATION

Procedural Role for the Mediator

The initial frame of reference for mediation is the law. The dispute settlement act will often identify notice procedures, i.e., the parties must notify a mediation agency or all mediation agencies (as in the case of Taft-Hartley) a specified number of days (usually thirty) before the contract expires.

But other state laws relate the dispute settlement procedure to budgetary deadlines that may not be exactly the same as the contractual termination date. In the public sector it is not unusual for the mediation deadline to be the first or at least an early deadline preceding all other dispute settlement steps. For example, the mediation deadline may be ninety days before the budgetary date deadline. Mediation must be limited to a specified period of time. Mediation perhaps may be forced to conclude sixty days before a budgetary deadline in order to allow for a fact-finding procedure or a compulsory arbitration procedure. The private sector always follows the Taft-Hartley deadlines--a simple thirty-day notice before the contract expires. But in the public sector mediation may be forced to come well before the actual deadline itself. The effective deadline may be reserved for the fact-finding or arbitration procedures, or in the case of a few states, such as Hawaii or Pennsylvania, there may be a strike deadline.

Initiating Mediation

The intervention of a mediator may come at the request of either party (management or union) the joint request of both, or on his own motion (actually on the motion of the mediation agency that may be empowered by law to intervene). As a practical matter, mediation functions best when both parties desire it. Therefore, most mediators do their utmost to enter a dispute on the invitation of the parties.

This is complicated by requests that may come obliquely. For example, a union official may call a mediator and urgently request that the mediator join labor and management at the next negotiating meeting, but conclude this invitation by saying "but don't tell anyone that I asked you to come." The mediator then must use his ingenuity to get invited officially by both parties. Again, if in the judgment of the parties mediation is premature or untimely, they should tell the mediator. They should discuss the best time and circumstances for the initiation of the mediation effort.

The initiation of mediation has several distinct stages. Most jurisdictions require by law that the parties notify the neutral agency. The notification period generally is tied to the termination of the contract or to a budgetary deadline. This is quite distinct from the request for mediation. First the parties notify the agency that they are approaching a deadline. Ordinarily a staff member will monitor the negotiations by calling the parties and asking about the progress of negotiations. They may discuss major issues, or there may be discussion about the chances of reaching an agreement. The type of response by the parties has much to do with the timing of the intervention of the mediator. It is, therefore, very important for the parties to combine discussions or how the negotiations are proceeding with frank discussion on the availability, effectiveness, and timing of mediation. If it is untimely, the parties should say so. The second step is the request by the parties for the participation of the mediator. This usually comes at the time of crisis--the impasse.

Timing

This is one of the most crucial aspects of the mediator's function. We have discussed above the aspect of timing in relation to when the mediator enters into the dispute: early or late. It is important that the parties control timing. Although many jurisdictions allow the mediation agency to intervene, most mediation agencies, in spite of their right to intervene, will respect the feelings of the parties. If the parties believe that another negotiation session might be fruitful without a mediator, they should tell the mediator. The parties should influence the timing of the initiation of mediation.

Once the mediator has joined the parties he is in control of the timing, but he does not work in isolation. The parties again can influence this assertion of control. Most mediators have developed a fine sense of timing and their notion of control of time should be respected by the parties. For example, most mediators know that in the early stages of negotiations the parties present their official points of view. They generally review their institutional positions. This is fully detailed by Ann Douglass in her book Industrial Pacemaking. In the beginning the mediator may take a passive role--he waits. But if it is the view of one of the parties that he should play a more active role, it should be discussed with him. Most mediators are flexible and do not work from a preconceived script.

Again, based on a mediator's style and experience, he will hold separate or joint meetings with the parties, depending on his notion of timing. But, if either one of the parties has strong feelings about the necessity for joint or separate sessions, the mediator should be told. There should be open discussion and a sharing of reasons for the timing of a particular stage. Unless the parties discuss aspects of timing with the mediator, they are entirely under his control. Most mediators welcome open discussion about timing because it makes the mediation effort more realistic. This applies as well to the timing of making an offer.

When should management make its final offer? This, too, should be discussed with the mediator. His observations need not be accepted completely, but it would assist the parties to talk through some of their strategy and tactics with a neutral third party who has considerable experience. The mediator should not shoulder the responsibility for the strategy and tactics of the parties.

Herman Torosian identified a problem inherent in too early participation by the mediator. If he is involved too early, at a stage of too many issues, "he becomes part of the negotiations." He becomes caught up in the dynamics and becomes less effective in the final stages of bargaining. If he is too early and if there are too many issues, it is an indication that there is a procedural breakdown; the parties have not been negotiating.

Chairing

Most effective mediators follow the advice of Billy Leiserson, one of the greats of mediation--a former member of the National Labor Relations Board and an influential teacher. He advised the mediator either to chair the mediation sessions or get out.[8] He should not be a passive observer. Once the mediator arrives, he is generally in control of the meeting; he will chair. If any of the parties are threatened by a neutral third party chairing a meeting, it is quite probable that they are neither ready nor willing to accept the role of a neutral third party to assist in dispute settlement. Most mediators are skilled in asserting their chairing function without abrasiveness and without threatening the parties. The mediator should chair, should be in control of timing, but should share his sense of timing and control with the parties.

Mediators, as Doherty, Zack, and Weinberg explained, are men of courage, who, if necessary, can take a stand in a public dispute. But, for their own good, the parties should avoid trying to commit the mediator to their cause. A mediator serves best as an anonymous agent for peace. To involve him publicly as an aid or an issue only serves to worsen the dispute and weaken his effectiveness.

Scheduling and the Control of Time

The mediator also should control the scheduling of meetings--the time of day and location. Again, the parties should voice their opinions and evaluations as to location, timing, and the need for meetings. It is not unusual for one of the parties, believing that the pressure should build up, to be reluctant to meet and to insist on delay. Therefore, the scheduling of a meeting may become a very important tactic. The mediator's potential role should not be vitiated by the parties jockeying for tactical position. It is rare that scheduling and location actually can alter the basic power of either party. It does not help the parties or the mediation process if the energies of the mediator are expended on peripheral issues.

The calling of meeting and recesses is in the hands of the mediator. This may become important, especially if the parties themselves have been in separate session and are at the crisis stage. They may not have a complete grasp of all the issues. If they have reservations about the wisdom of a recess or the calling of a meeting they should share their concerns with the mediator. The mediator may not be able to reveal all the relevant facts. For example, if a union has an internal political problem with the membership and the mediator believes the chances for a settlement would be enhanced by more time without direct negotiations to allow the membership to consider the impact of a strike he might not want to discuss this in great detail with the management team. The exchange of tactics and reasons for the tactics should be explored by the parties if they are concerned with the mediator's sense of timing.

Delay, extensions, precipitating a crisis, providing artificial deadlines, are all various aspects of timing in which the mediator plays an important role. Often when there is no pressure in a negotiation, the mediator may provide some. It is possible simply to say, "By midnight we should reach agreement on all outstanding issues." There may be no compelling reason for agreement by midnight, but if the parties react to this declared intention on the part of the mediator, it may serve a very useful purpose to negotiate toward a deadline. If they accept it and do it, it works.

Location

This is a much exaggerated issue. Labor and management often spend an inordinate amount of time and concern about the specific location of meetings. Most negotiating relationships have established traditions of location, a majority are conducted at the place of employment. But many others seek neutral territory: a motel, public meeting facility, or the free offices of a mediation agency. If there is any controversy or even minor discussion between the parties about location, the mediator, if he cannot immediately resolve the issue, should establish some neutral territory for the meetings. If there are disputes over location, mediators usually find facilities, if possible, at the mediation agency or in some public building. Otherwise, if they must be held in some hotel or privately-owned meeting facility, the parties share the cost. If the sharing of the costs becomes a major issue between the parties, a resourceful mediator should be able to find some free public facility, perhaps not at the first level of comfort or convenience, but one that would eliminate the cost factor as an issue for negotiations. The more uncomfortable the free facility, the more inclined the parties are toward resolving the location problem.

Mediation Is A Private Process

It is difficult to develop effective mediation in the presence of an audience. The essence of mediation calls for deliberation, confidentiality, confidence, a willingness to explore alternatives, and a quiet work atmosphere. Meetings that are open to the public tend to inhibit the parties and to encourage posturing rather than problem solving.

Torosian warned against mediating in public. "It needs an informal quiet process." The parties may meet the need of the public to know by joining with the mediator to draft and release information on the progress of negotiations. The parties may have less propensity toward publicity if the mediator can create a neutral atmosphere for press releases.

Joint and Separate Mediation Sessions

The sense of timing as to whether parties should be negotiating jointly or separately with the aid of a mediator is usually left in the hands of the mediator. But as has been pointed out several times, if either party has a concern for the tempo of the negotiations or if there are strong feelings about either a joint or a separate session, the matter should be aired with the mediator. Most mediators start their initial effort jointly. (Douglas) After the parties have established their positions, he discusses the details separately. It is easier for the parties to level with the mediator when they do not have the other side participating in the conversation. It is safer for them to point to issues that are more important than others and for them to pick apart the opposition's issues and positions. But if either of the parties reaches a point where they feel their positions are not accurately reflected by the mediator, or perhaps that he may not understand the issues as clearly as desired, or that the issues are drawn so obviously that it takes direct conversation with the other side to generate movement, then the parties should inform the mediator that they are ready for a joint session.

Mediation Pressure

The mediator pushes the parties away from their fixed positions toward a mutually acceptable settlement. Each side may become uneasy with the pressure because it experiences only its own informal sessions with the mediator.

The parties may level with the mediator, but as Bruce Taylor said, "They do not know what goes on in the next room." The mediator must be able to communicate the sense of the mediator's pressure efforts without breaking a confidence or jeopardizing the resolution of the disputed issues.

There is a simple rule to remember: the mediator pushes both sides toward a settlement. They do not necessarily meet at the midpoint. The parties control their own movement. A mediator rarely can succeed by pressuring one side only. His skill in building on both sides is manifest by his ability to get a settlement.

The Caucus and Its Function

It is typical that after a mediator discusses the issues one side may wish to withdraw for some frank analysis in order to be able to respond to the mediator's suggestions or questions. Most mediators will encourage the parties to consider alternatives out of earshot. They may have their own internal frank discussion and possible disagreements without jeopardizing their official position, or the integrity of final decisions, or without exposing their divided opinions. It must be noted that if a mediator is conducting separate sessions, every time he is visiting with one party or another, the other side, in effect, is having its own separate caucus. Regardless of the mediator's sense of timing, tempo, or goals, if either side feels there is time or need for internal discussion away from the other side and separate from the mediator, they should simply tell the mediator that their side would like to caucus. The parties are better off caucusing too often rather than running the risk of internal dissension that may spill over into a more complicated negotiating meeting, or worse, making decisions without complete evaluation.

The Off-the-Record Meeting

Occasionally when a mediator is participating in a particularly difficult or stubborn case that resists easy, obvious solution, he may choose to meet off-the-record with one side or another or perhaps with the key leaders, separate and apart from the negotiating committee. This can be risky. At times union committees and membership may resent in an extreme fashion the participation of their leaders in off-the-record meeting with a mediator or in an off-the-record meeting with the mediator and a representative of management. It is up to the key negotiators for either side to use their own judgment as to whether they participate or not in such a meeting.

An off-the-record meeting often serves as an opportunity for frank exploration with key people representing both sides. It may clear the air as to where the parties stand on important issues and may be done in an open fashion so that neither key negotiator need be concerned about appearances or the feelings of his committee. If the participants are sophisticated, matters discussed in confidence rarely are used to jeopardize the positions of the parties. Off-the-record meetings should never be used to the advantage of one side and the detriment of the other, but they should be used to enable key negotiators to deal directly and swiftly with major issues. Again, the parties control this device themselves, but in the hands of a skilled mediator, the off-the-record session is often the key substance that may provide the catalyst for a settlement.

Committee Size

The size of a committee is the direct concern of the parties, not the mediator. But often a very large committee slows the progress of the negotiations. If the size of the committee at the bargaining table proves to be unwieldy in the judgment of the mediator, he may suggest that the negotiations be conducted by a smaller group. This new group may become a formal negotiating team or may be simply an informal subcommittee. An off-the-record meeting may well become a variation. Often negotiations are speeded when the participants are fewer.

The union committee may be large if it reflects the structure of the organization itself with each member representing a given constituency. The size and composition of a negotiating committee is in the hands of the parties, but the mediator may suggest alternatives in order to make the committee more workable and to speed agreement.

Subcommittees

One of the subcommittees could well be a smaller negotiating committee. But often subcommittees are set up at the suggestions of the mediator to deal with a specific issue. For example, a problem of seniority may be very difficult to resolve in case of layoff because of the composition of the enterprise. The subcommittee may be appointed to deal only with that specific issue and directed to report back before the conclusion of negotiations. A subcommittee could handle non-negotiable professional issues for teachers. A mediator may organize a series of subcommittees, all working at the same time, while the key negotiations are going on. He may coordinate the reporting of the subcommittees to the main negotiating group. This is a useful devise to aid the parties in dealing with many issues in an orderly fashion without cluttering the direct negotiations themselves. It develops an atmosphere of problem solving and accommodates many participants without miring the bargaining meeting.

Notes and Records

Notes, minutes, records, and transcripts are the responsibilities of the parties, not the mediator. The mediator is neither a note taker nor a secretary. Each party is responsible for keeping track of its own issues and for recording what has been transpiring at the negotiating meetings. Some parties insist on keeping minutes of meetings. This is rare. Ordinarily this is very difficult because the parties tend to hear what has been said from their own point of view. The discussions between the parties over differences in the minutes become the negotiating issues themselves. Too often trying to keep uniform minutes results in creating new divisive issues. Therefore, parties should keep their own minutes.

The mediator obviously must keep his own notes. Each of the participants in the negotiations is free to maintain the sanctity of his own notes that are not and probably should not be shared with others.

It is recommended that the parties do not have a transcript of the mediation session, nor should they have a tape recorder. Obviously, if the parties both wish a transcript or a taping of the mediation sesssion, the mediator may defer to their wishes. As a personal matter, I never mediate in the presence of a tape recorder. It inhibits the parties. They tend to speak officially and interminably in the presence of a microphone. They fear running the risk of exploring alternate suggestions because it may haunt them in a recorded form. Most people find it awkward to say some things directly or to respond in a frank fashion if their uninhibited response will haunt them in print or in sound. The very essence of mediation is that people may explore issues informally with no commitments until commitments are ready to be made. It is the informality and the looseness of structure that encourages agreement and results in contract. The ambiguity of discusssion should result in the preciseness of the contract language.

Although the mediator does not serve as a note taker, he does keep track of the issues for his own needs. Often, as negotiations continue, if they are complex and spread over a period of time, it is the mediator's list of resolved and unresolved issues that may become a common agenda.

Because the way he clusters the issues, sorts them out, and structures them, controls or influences the parties in the way they deal with negotiations matters, the mediator's control of the agenda is closely related to his keeping track of the issues.

Drafting Language

Although the mediator is not a note taker, he often can be useful in drafting language or making suggestions for language or language changes. The parties should encourage the mediator to suggest tentative language that may serve as a focal point for their discussion and evaluation of possible language changes. Or they may agree in principle on an issue or its solution and turn to the mediator for possible draft language to put their loose tentative agreement into contractual form. But the mediator is a mediator. The parties should not lean too heavily on him to serve as a technical or legal consultant to them; he is not a surrogate con sultant or attorney.

Spinning Off Issues

Spinning off or deferring issues often helps simplify the negotiations. The most obvious device simply is to take an issue off the bargaining table to be set aside for future negotiations during the next contract year, or to be deferred to a subcommittee. Some issues, especially those that flow out of the grievance procedure, may be referred to arbitation. Long-range issues that transcend the contract itself may be referred to a labor-management committee to study, analyze, and report back before the next contract negotiations. Fact-finding, private mediation, and special subcommittees are all aspects of deferring or spinning off issues to some other forum.

The Mediator as a Buffer

The mediator may at times serve as a useful buffer between groups of employers or other unions. For example, if a common employer is dealing with many different union, often the mediator may play a constructive role in relieving some of the tensions that exist between rival unions or unions that are not necessarily rivals, but who may have a different mix of issues. This can be a dangerous function for the mediator since he should not put himself into a position of aiding one union against another or aiding one set of employers against another. But there are times when this role can be very useful. It may perform a function for the parties that they themselves cannot do for themselves.

Often the mediator may serve as a buffer between the parties and the public. Mediators tend to be cryptic in discussing the issues in the negotiations. This may keep negotiations out of the headlines. The mediator's role must be balanced carefully. It may well be that the issues should be aired publicly and public pressure should be allowed to build up. This is a matter of judgment and must be worked out between the parties and the mediator. The mediator should not be party to subterfuge, but if serving as a buffer provides a useful aid toward reaching an agreement and it can be done with integrity, it is a useful device.

Continuing Mediation after the Strike

The start of a strike, even in the public sector where it may be illegal, is not the end of the world. The issues are there. The parties are still present. The difference between labor and management must be resolved. The mediator serves a most important function in continuing the parties in negotiations, even though in strike. Obviously, if strikes are illegal, and if either party chooses to go to court to put pressure on the other side, or to test some of the legalities that may be involved in the strike issues, the mediator cannot substitute his function for that of the judge of the court. But if there is any useful purpose in reaching a settlement, and there usually is, the mediator has an important role to play at that point. It should be noted that even if the parties go to court for an injunction to end an illegal strike, the issues are still there and must be dealt with. That is a role for the mediator. The role of the judge is to enforce the law. The role of the mediator is to get the parties into agreement.

The Mediator as Catalyst

The mediator provides the opportunity for precipitating the resolution of issues. Often the parties present the issues in such absolute terms that neither side can explore an alternate position. The mediator provides the opportunity for a reevaluation of positions, for changing the direction of one's discussion, and for precipitation discussion and agreement. This is a very valuable role for the mediator. It also provides an opportunity for either one of the parties to focus and precipitate discussion on an alternative.

The Mediator as a Resource

The mediator should be able to add a rich background of experience in a variety of industries dealing with many different types of employers and union. He should be able to recast packages so that they are different, shift issues so that agreements may be reached, add new views to old problems, toss in new ideas, enrich the discussion with examples from other negotiations and other employment relationships, and he should be resourceful in being able to shift frozen issues into resolvable forms--for example, the lengthening of a contract in order to provide another form of compensation. The management may welcome the added time for stability; the union may welcome what seems like more money.

The Mediator as Whipping Boy

Occasionally the parties may be able to blame the mediator for the unpleasant aspects of their negotiations or questionable parts of the agreement. For example, a local union may prefer to reach an agreement with management on an issue that is counter to the wishes of the international union. The local union may reach that agreement and cast the blame on the mediator. Although it is possible for the mediator to be a whipping boy, the mediator should not allow himself to become the cover for unethical actions, nor should the parties put him in that position.

The Mediator as Orchestrator

Often the mediator can serve a useful function in aiding the parties to develop a sense of strategy in their negotiations with each other. The parties should discuss their tactics and strategy with him. But this can be abused. For example, once when a well-known mediator was explaining on TV why a transportation strike was inevitable and could not possibly be resolved before Christmas, at that very moment the proprietor of a major hotel was meeting with key representatives of the union and the city. Over a bottle of scotch he managed to get the parties to reach an agreement, which was announced as the mediator was explaining on TV that prospects for an agreement were hopeless.

How Much Should You Tell the Mediator?

Don Doherty believes the parties should tell all to the mediator because he cannot function well in the dark. But others feel the parties should exercise caution by delivering pieces of the package rather than the full package. Much has to do with the degree of familiarity and confidence fostered by the mediator. If the parties are at ease with the mediator and sure of his abilities, they tend to be more open. If the parties are not sure they tend to be more restrained.

It is important to note that the parties do not always have a strategy or a well-designed package. This may evolve as the negotiations progress. Also, mediators need not know "all" at the early stages of the process. Full knowledge is crucial at the time of the settlement crisis.

How to Use a Mediator

John J. Pearce, former executive director of the New Jersey State Board of Mediation offers some suggestions on how to use a mediator:

Pointers for Negotiators When in Mediation

1. Don't stress obstacles to agreement. Putting too much emphasis on technicalities and legal obstacles will not impress the mediator. He wants to get an agreement and is interested in the positive approach.
2. Don't shade the facts. The mediator cannot do his job with half of the information or information that is edited too carefully.

3. Support your position with reasons. The mediator wants to know the "Why" of your reasons so that he may evaluate the situation and interpret to the other side, if necessary.

4. Don't give tentative indications of commitments you don't intend to keep. The mediator is trying to produce an agreement based on his explorations and tentative commitments. If one building block falls, they all fall.

5. Don't procrastinate. Delay for its own sake will impede eventual agreement. Once the mediator has the "feel" for a situation--go along with his general timetable. He is now in charge.

6. Be pragmatic and honest about positions taken. When you have reached the mediation stage, the charade, if any, should have been played out and you are down to hard bargaining.

7. Be calm and patient. Histrionics won't impress a seasoned mediator. He's been there before. He's more impressed with a calm, rational approach.

8. Don't try to be clever or "sharp" with the mediator. This will only impede the process and add to the delays. It's your agreement.

9. Don't take a hard and fast position. If you have to give a final offer--do it yourself--don't expect the mediator to do it.

NOTES

1. William E. Simkin, Mediation and the Dynamics of Collective Bargaining (Washington, D.C.: Bureau of National Affairs, 1971), p. 29.

2. Bernard P. Indik, Bernard Goldstein, Jack Chernick, and Monroe Berkowitz, The Mediator: Background, Self-Image and Attitudes (New Brunswick, N.J.: Research Program, Institute of Management and Labor Relations, Rutgers, The State University, 1966), p.59 (Hereafter cited as The Rutgers Study).

3. William Weinberg, "An Administrative History of the New Jersey State Board of Mediation" (Ph. D. diss., University of Pennsylvania, 1964), pp. 55-56.

4. Indik, et al, The Rutgers Study, p. 59.

5. Henry Landsberger, "Interim Report of a Research Project in Mediation," Labor Law Journal (August, 1955).

6. Simkin, Mediation, pp. 16-19.

7. Ibid.

8. William Leiserson, "The Function of Mediation in Labor Relations," Proceedings Fourth Annual Meeting December 28-29, 1951 (Boston: Industrial Relations Research Association, 1952), p. 11. This was stated often by Dr. Leiserson, but it may be found in a more gentle version here.

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The following discussion of fact-finding is an excerpt from the discussion led by Arnold Zack at the Project 505 Conference in Harrisburg, Pa., December 9, supplemented by some of Mr. Zack's published writings in "Understanding Fact-Finding and Arbitration in the Public Sector," and published by the U.S. Department of Labor and offered for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FACT-FINDING IS A DIFFERENT PROCESS FROM MEDIATION

Initially, let's deal with the definition of fact-finding. Fact-finding is not what it says it is. It includes finding the fact, but it is much more than that. It's the finding of fact and the making of recommendations that will resolve the dispute. Indeed, fact-finding is vague and non-scientific. It is a boot-strap kind of operation in which each party has an opportunity to try to convince a neutral that its position should prevail and that he should issue recommendations encompassing as much as possible of its demands.

Historically, fact-finding was created as a substitute for a strike. Mediation is involved as it is in the private sector but since there can be no possibility of a strike, which follows mediation in the private sector, fact-finding is created. The pressure of public opinion when the fact finder's report was issued, the results, for example, what equity was arranged between the parties, would lead to great public pressure on the parties to accept the fact-finding recommendation--or at least that was the thinking behind the Taylor Act in 1966.

Fact-finding was supposed to enlist a great deal of public support with recommendations and to bring a settlement at that point, with both parties accepting the fact finder's recommendations. It hasn't happened because nobody ever finds out what is in a fact finder's report. In some of the sections now, the report is kept private for a period of time and not released to the public. In those situations where it is released to the public, nobody ever sees the report, nobody ever reads about it. Most of the reports aren't very interesting--they are very dull. They are often misquoted and they are geared more to the acceptability of the parties than to the equity of what might bring about a settlement. So the fact finder who enters the situation presumably after mediation is not operating in a context of public concern, public interest, and public awareness; he is functioning as a go-between and as a neutral working with the parties, trying to come up with a recommendation that he thinks will be acceptable to the parties.

The public really has very little impact on the parties' determinations in making their positions or in terms of the settlement of the dispute. The fact finder dealing with acceptability has to--for pragmatic purposes, wants to--come out with a report that will dissolve the parties' dispute. His problem is how to achieve acceptability when he doesn't know the range of expectation. This leads some fact finders into a mediation role, trying at least to find out the area of the range of acceptability, in the hope that the recommendation issued by the fact-finding will resolve the parties' dispute.

All fact finders are not suited to this dual role. Most of the fact finders have backgrounds of serving the private sector as arbitrators in labor-management disputes. There are new fact finders now available whose backgrounds include public sector collective bargaining, but by and large, most of the fact finders come from the private sector and are of labor-management arbitration background. They, indeed, run the fact-finding here much as in an arbitration hearing; including a presentation of the facts with examination and cross-examination. Only those fact finders who feel comfortable with mediation are likely to undertake the mediation but they usually do so with the consent of the parties. If the parties don't want to mediate or don't want to discuss mediation then the fact finders do not force mediation on them. This means they must try to ascertain from the material presented at the hearing what will be acceptable to the parties. Sometimes they are right and sometimes they are wrong. Sometimes they come up with a solution which is acceptable to both sides and a settlement is reached. Sometimes they misjudge the situation and rely more on some data than on other data and their recommendations are not accepted and the parties are still at impasse.

There are sometimes when the fact finder's report may go all the way down the line to one party's advantage and although it may lead to a settlement it most frequently does not.

Fact finders and the fact-finding process is a quasi--very quasi--judicial adversary process through which the parties present their evidence to a neutral who then makes a recommendation for the resolution of the dispute on the issues that were presented to him.

SELECTION OF THE NEUTRAL

How is a fact finder selected? The parties can agree on a fact finder of their own. If they are unable to agree on a fact finder, they may resort to the facilities of the American Arbitration Association (AAA) which maintains a list of fact finders from its panel of neutrals. The parties can then alternately eliminate the names of those they don't want, leaving the ones who are acceptable. An identical list can be sent to both parties and the parties can then indicate which of the names on the list are acceptable and in what order and then the AAA will then designate the highest mutual choices of the fact finders. The fact finders also may be designated by a state agency. In New York State and, perhaps in Pennsylvania, fact finders are appointed with or without the permission or the acquiescence of the parties involved, as designees serving as agents of the state agency. In some cases, fact finders have been appointed by judges when there is no arrangement for designation of a fact finder and no available state agency. But usually the parties have a greater say in the selection of the fact finder than they do in the selection of the mediator. Now there is nothing to stop the parties from designating and agreeing upon their own fact finder even if they do have a statutory arrangement for the designation of a fact finder.

It is more important for the parties to have a stake in the selection of a fact finder than it is to have a stake in the selection of mediators. The mediator really is a go-between--he is there to help the parties get their own resolution. The mediator may sometimes contribute his own input to a settlement, but usually his input is geared to what the parties are willing to accept. He leads the parties to the resolution that they themselves are willing to accept, so there is not that much reliance on the input and judgment of the mediator. Fact-finding is different. In fact-finding, the procedure does call for an input and judgment of the fact finder; if the parties have a say in the selection of the fact finder they are more likely to be influenced by, and perhaps convinced of, the ultimate wisdom of his findings.

Now what are the qualifications? Most fact finders come from the private sector of the labor-management area. In the early days of fact-finding, which is not very long ago--about 1966-68--there was a debate at the outset of the public sector impasse era as to whether or not it would be better to get neutrals who were expert in the subject matter of education and police and fire protection, or whether it was better to get someone who was expert in the procedure of impasse resolution. The parties tried both and I think the initial excitement over having people who were expert in substantive requirements of education and police and fire protection problems to a professional arbitrator than it is to bring in an expert in public education and teach him about the handling of a hearing and how to deal with objections, how to deal with hearsay, and the value of certain kinds of evidence over other kinds of evidence. For whatever reason, the creators of impasse procedure in the public sector have opted to model themselves after impasse procedures in the private sector and the rules of conduct of private sector impasse resolutions have been adapted or transferred to public sector disputes. The expertise on the substantive areas has not been as important a criterion in the selection of a neutral as the expertise in the running of a hearing or in the process of mediation. Indeed that is not entirely without reason,

For example, I spend probably 75 per cent of my time as a private sector arbitrator. I have to be taught by the parties in the substantive area what is important in each case. Last week I was taught how baked beans are made. Somebody said he should have been in one job rather than in another job in a company that made baked beans. We went through the factory and they taught me how the beans are poured and how the beans are baked and who has the responsibility for the controls of the oven and all of that sort of information. Three days earlier, I was in an airline case in which I had to determine the qualifications of a pilot. It was something which the parties had agreed to go to abitration over and it was incumbent upon them to train the arbitrator on the substance of the dispute between them.

When I first started to work with education cases, I didn't know very much about education and I still don't, but I have learned over the years what some of the items are that are in dispute between the parties. If I did not understand at the outset how the increment structure works or its impact or the inequities of the increment structure on the people at the top, step-by-step I have learned. If I didn't know anything about class size and the recommendations of whether or why class size should be different for different classes in education, I soon learned enough so that the parties were willing at least to stop my educational process and accept my judgment on the basis of their presentation.

I am not claiming to be an expert in any of these areas. I am saying that it makes more sense, and it is easier, to train a procedural expert on the substantive matters than it is to teach an education expert the procedures of handling a hearing. This is particularly so because in the process of developing expertise in the education field, a person has to be a part of either the employee or the management side and the question as to whether he is acceptable to the other side arises.

In any event, that is the way the field has grown and the qualifications of the fact finder are usually based on the experience he has had in handling hearings and in making judgments based on evidence submitted to him from the private sector. It is to be hoped that we will be able to find fact finders who have developed sufficient expertise in the field of public education for you to have some faith in their judgment. In most cases when there is a choice of a neutral party, the designating agency will provide you with facts concerning his background and experience. By reading some fact-finding reports, reading some arbitration awards which are published by Loose-Leaf Service, by the AAA, by some management groups and by the BNA, you can get some ideas as to his decisions and his behavior in decision-making situations where the parties want more than a fact finder.

COMPENSATION OF FACT FINDERS

On the question of availability and compensation, there are enough disputes in the private sector to keep arbitrators and fact finders very busy. Most fact finders and arbitrators are booked well ahead in their schedules and it is often necessary to wait a substantial period of time to get the kind of fact finder that you may want to have. There are many fact finders with somewhat less experience who are available on shorter notice. In the interest of the long term development of new fact finders and arbitrators it behooves all parties to run the risk of taking some newer people occasionally to give them the exposure that they need to develop. The average age of arbitrators in the U.S. is now 60.

Fact finder's rates run pretty much the same as arbitrator's rates in the private sector, between $200 and $330 a day for each day of hearing and each day spent in preparation on the final report. There are states that have unique arrangements, i.e., Pennsylvania, where the parties each pay one-quarter and the state pays one-half of the fact finder's cost. In New York and New Jersey, the state pays the whole fee and the fact-finding is free to the parties.

PREPARATION OF THE CASE

How do you determine what the issues are in the dispute? Do you go to fact-finding on issues that have been narrowed by the mediation process or do you start on the process where you were before mediation? The parties will go back to where they were before mediation.

Assume there were ten issues in dispute prior to fact-finding. Suppose during mediation the issues were narrowed to three for the employer and five for the union. The union might perceive it a benefit to get back to its ten original issues. Or the employer might not choose to go back to ten issues with the hope that it is easier to convince a fact finder if there are only five or three issues.

The fact finder's goal is to try to resolve the dispute. He has to be convinced. It is generally assumed that all those provisions of the contract that are not affected by any demand raised in negotiations will continue as they have been before. The party that seeks to change any existing contract provision has the burden of showing why it should be changed. It is important in preparation of a case to keep a careful log of those provisions in the contract which have given rise to disputes between the parties. Indeed, I think the cleverest device in doing this that I have seen is a notebook begun at the start of the contract year with one provision on each page. Any time any grievance or protest arises as to a contract provision an entry is made on the page of that contract provision so that at the end of the contract the clauses have caused difficulty during the year will be readily ascertained. These are the clauses which should trigger a proposal for modification of the contract either to clarify uncertainties in the present contract or to change a present contract radically.

This is a very important set of data to have when fact-finding starts. It enables a party to provide the fact finder with what he needs to create a report and recommendation in support of a position. There are all kinds of data available but you have to pull them out. Let us say there is a problem with the budget. It isn't enough to say to a fact finder "Here's the budget and we don't have the money". It is better to go through that budget and explain it to the fact finder. You must educate him as to what is in the budget. In fact, it is to be hoped that you will have enough time to educate the other side as to what is in the budget. School boards need to educate teachers to the fact that there is no money in the budget. Teachers need to educate administrators to the fact that they know there is money in the budget. A school board is not going to hire 75 new teachers for a school system that has 30 people, although there may be that kind of money in the line for that number of teachers. You really have to pull out the facts. You have to convince a fact finder that a standard of comparablility makes sense and to do that you have to show that there is a universe and that the data supports your case.

PRE-HEARING STATUS OF NEGOTIATIONS

Once a commitment is made to proceed to fact-finding or arbitration, the nature of the conflict between the parties changes. For all intents and purposes, direct negotiations are abandoned as the parties prepare for the next step, although there is nothing inherent in the structure of impasse procedures which requires this. It usually results from a recognition that direct negotiations have failed, and that it would be better to get some direction from an outsider. There may be a combination of disappointment and relief that one step in the progression has come to a close, and that the next, and presumably the last, step is about to begin.

The negotiated status of the items that have been discussed must be clarified at this time, preferably by mutual agreement. It must be remembered that the traditional practice in negotiations is to make only tentative agreements on each item, pending agreement on all items of the package. In pursuit of the overall settlement, the parties generally initial each tentatively resolved item as they reach agreement on it.

Although the breakdown in negotiations which comes with an appeal to fact-finding or arbitration should logically signal a release of all tentative agreements, the parties generally agree to adhere to their tentative commitments by submitting only the unresolved issues to the next step. This practice is followed for several reasons.

First, the parties usually recognize that they have achieved the best attainable positions on such items. Second, they hesitate to reopen such issues before a neutral who may come forth with a different result which may even be at odds with the parties' settlement. And, third, the cost and delay of rearguing issues already tentatively agreed upon make it obligatory to at least attempt to reduce the number of outstanding issues to those where recognized impasse still exists.

The parties should meet after the impasse has been called to arrange for the selection of a neutral and to establish an understanding on the disputed issues to be submitted to that neutral. In so doing, it is possible that further agreement on some such issues might result. This is all to the good and should be encouraged. But as indicated above, the usual result of declaring an impasse is to freeze the parties in their positions and start them in their preparation of witnesses, material, and data in support of their respective positions before the fact finder or arbitrator. They should agree to bar the introduction of new demands and to bar any changes in their respective positions unless such new position is closer to that of the other side. Theoretically they should agree to refrain from disclosing unsuccessful efforts of compromise, made in negotiations or mediation, since exposure or publication of such offers of compromise which carry an implication of willingness to move back from a position, are likely to have a deterrent effect on the making of such offers in the future. The neutral presumably should have before him the positions adopted by the parties when they began to negotiate as a basis for comparison with their positions at the time of declaring impasse. However, intervening offers inevitably come into evidence despite their effect as a deterrent to future negotiations and often constitute an aid to the neutral in sorting out the issues and in gauging the acceptability of certain proposals.

THE ROLE OF THE PRIOR AGREEMENT

Presentations to the fact finder or the arbitrator require the development of precise proposals for new contract language. When an impasse between the parties arises during the negotiation of their first collective bargaining agreement, it is reasonable to expect that the issues in dispute will cover a number of proposed contract provisions. It would be preferable if most of these disputes particularly those over routine collective bargaining language, were resolved by the parties in their direct negotiations or in mediation. Those items which are not so resolved are properly presented to the fact finder or arbitrator. It facilitates matters to have the presentation made in the order in which the disputed items will appear in the proposed agreement. It is also helful if, in presenting their positions, the parties frame their proposals in terms of specific contract language, rather than in concepts. This enables the other side to determine exactly what is sought and to develop responses which will have a greater likelihood of acceptance. Utilization of specific proposed language by both parties in their presentations helps the neutral to pinpoint the extent of difference between the parties. But the mere presentation of proposed language is not sufficient; the parties must prepare evidence to support the validity and reasonableness of their respective positions.

When an impasse occurs in a situation where the parties have an existing collective bargaining agreement, it is generally assumed that the prior agreement will continue in effect except for newly proposed provisions and revisions of existing language requested by either party. The experience of the parties during the life of the preceding agreement may be the determining factor considered by the neutral in deciding whether to support a change in contract language. The number of grievances which arose over certain provisions, an adverse arbitration award, changes in state law, administrative rules and regulations, the advent of new benefits in other contracts, and questions over the intent of provisions should be sufficient to trigger the parties into considering language changes for clarification or substantive revision. These should be documented to the neutral to support the parties' positions.

In the case of proposals for new or additional benefits, it is desirable for both parties to be prepared to point out to the fact finder or arbitrator the impact of such additions on the existing language. Full attainment of such benefits may be stymied or precluded by language of other existing provisions of the contract, and subsequent conflicts may most easily be forestalled by anticipating such problems and bringing all related contract provisions into conformity.

Another fruitful activity for the parties in preparing their case for presentation to the neutral is to examine the minutes of previous negotiations. The attitudes of the parties, the trade-offs, the assurances and the invent in agreeing to existing language may be valuable to the neutral in considering such provisions or changes therein in the present impasse.

Finally, there should be careful scrutiny by the parties of any arbitration awards rendered under the grievance procedure of the previous agreement to determine which contract terms merit revision. Such prior awards, although themselves not subjects for negotiation, may give rise to changes in contract language pertinent to them. If the parties fail to amend the referred-to language in the negotiations following issuance of the grievance arbitrator's award, that usually is viewed by later arbitrators as acquiescence to the interpretation of the language set forth in the arbitration award and thus dispositive of the issue in a subsequent grievance case. On the other hand, language change in negotiations is usually viewed as an effort to alter the impact of the earlier award. Thus, earlier arbitration awards may create an adverse precedent and should be examined in that light. In such an examination it is important to look beyond the specific finding, for buried in the award may be the disposition of ancillary issues such as procedural items which may have an even more adverse, long-term impact on the parties' relations than the final disposition of the grievance. If one party doesn't find these nuances, the other party or the arbitrator might. It is worthwhile, too, to read arbitration awards on disputed items which have been rendered in comparable jurisdictions to learn trends that might come to the fore in the parties' own jurisdiction and to foreclose such problems arising between the parties by preventive alteration in the parties' agreement.

DATA DEVELOPMENT

Researching and preparing data are critical in interest dispute resolution. Probably the greatest percentage of impasse hearing time is spent on the introduction and use of supporting data. As previously noted, although these data may not be crucial during negotiations and mediation, they are important during the hearing. The fact finder or arbitrator is being required to provide his judgment as to whether a particular issue should be decided one way or the other. In order to make a responsible disposition of the issue, he needs data and other evidence from both sides to support their respective claims.

The criterion most frequently invoked by the parties in support of their positions is comparability. Each side will argue that the neutral's determination of, say, the appropriate wage rate, should be based on comparison. The organization might contend that the present wage rates are low by comparison elsewhere, while the employer might argue that they are high by comparison elsewhere. Certainly such comparisons are important to the neutral in making his determination. But it is essential, first, that in their comparisons the parties have accurate statistics; second, that their comparisons are based on a credible universe; and third, that they are persuasive to the neutral. Each of these elements deserves closer attention.

First, the need for accurate statistics is paramount. Heresay reports on contract terms and newspaper or radio reports of wage settlements may be correct. But if they are successfully challenged as inaccurate by the other side, they are self-defeating and, as a result, credibility on other data may be damaged beyond repair. Confusion over means, medians, and averages may also invite challenge. The parties should each check and double check the accuracy of reported data and the accuracy of their own recordings and computations.

Second, the logical question is comparison with what? A group randomly selected wage settlements in five "nearby" communities is hardly likely to be convincing to the neutral. Either party may pick such wage settlements to make its point, but if five are shown by the organization to be higher, and five are shown by the employer to be lower, the comparisons are hardly helpful to the neutral. It is preferable for the parties to select a statistical universe in which the level of wage rates supports their contentions. The comparisons may be intra-governmental, inter-community, public sector vs. private sector, or even historical. Thus, either of the parties might select wage settlements in all contiguous or adjacent communities, wage settlements in all communities in the county, or wage settlements in all communities of the same size in the state. They may seek to compare wage rates for similar work in the private sector in the community, the metropolitan area, the state, or the nation, using data compiled by the chamber of commerce, the state education association, the state school board association, or the bureau of labor statistics as the basis of comparison.

They may undertake to make a historical comparison, with one side showing the average increase in wage rates in the bargaining unit over the past four years compared to other communities, while the other side shows the average increase over the past ten years. One party may argue more favorable cents-per-hour increases, while the other argues more favorable percentage increases.

All these data, if accurate, are valid means of supporting the parties' arguments. The standards of comparison are limited only by the interventiveness of the parties' researchers and spokesmen.

Third, the ultimate goal of such comparisons is their persuasiveness to the neutral. It is in the parties' interest, and is essential to the neutral, that he be provided with sufficiently pertinent data to be able to invoke them in making his determination. Comparison of rates in the local public sector labor market are therefore more likely to be useful to the neutral than a comparison of rates in a distant part of the state; comparisons to the rates paid in the private sector are helpful if hours, fringe benefits, and the like are also compared. The showing of a historical tandem relationship in wage rates over a number of years may be persuasive provided that the basis for that tandem relationship is still acknowledged to exist.

Comparability is a forceful tool, therefore, when the data are accurate, when they are comprehensive in their comparison, and when they are based on standards that are convincing to the neutral. Each side would do well to look to the comparability data most favorable to the other side and develop effective rebuttals therefore, challenging content, or coming forth with comparisons even more appealing to the neutral.

A second area where substantial data are usually offered is on the issue of the employer's ability to pay. In times of inflation and increasing fiscal pressures on public employers, the defense of inability to pay is heard with ever greater frequency. Employee organizations respond to this plea by attempting to show that there is no inability to pay, that the defense really represents an unwillingness to pay, and that adequate funds are available to meet the employees' demands. Budgets, tax information, per-pupil or per-capita valuations, state and federal subsidies, surpluses, building funds, bond issues, cost-of-living indices, productivity, and the like, are all valuable criteria for the parties in making ability- or inability-to-pay arguments.

Since each of the parties seeks to persuade the neutral of the merits of its position, each must provide detailed explanations of the voluminous statistics--charts, budgets, auditor's reports, and the like are far too often dumped on the neutral's table--and indicate how the data supports their respective positions. Failing to do so, the neutral may suspect that the paucity of clarification is due to one or more of the following: 1) implicit recognition by the submitting party that its arguments on ability or inability to pay are not supported by the data; 2) ineptitude in sorting out and analyzing the data in a meaningful and convincing manner; 3) an assumption that, even if an exemplary analysis were presented, if would be incomprehensible to the neutral; or 4) conviction that even if the analysis were understood by the neutral, he might not view it as relevant. Some neutrals have, indeed, proclaimed that the funding question, or the question of whether or not the employer can afford a particular settlement, is beyond their responsibility. But the fact remains that statutory language increasingly mandates to them the responsibility for determining the employers' ability to pay. The side-stepping of that issue may be destructive to the settlement which the neutrals assert is their objective.

To overcome the negative impact on such data being left for adsorption by the uncomprehending neutral, the parties are advised to cull the relevant data from the available mass and integrate them with a step-by-step analysis of the content and its pertinence. This is true whether the exhibits be a line item for textbooks in the school budget which the teachers claim is being used to mask available money for salaries, or whether the exhibit covers a complicated presentation of how state aid is diminished by cutbacks and the resulting consequences on local property taxes. Failing to ensure that the neutral understands full the material presented to him by each party, each risks that the presentation of the other side will be clearer, more appealing, and perhaps thus embraced by the neutral in reaching his decision.

In addition to the broad spectrum of data collection inherent in comparability and ability-to-pay arguments which are of primary usefulness in determining the validity and credibility of economic proposals, there are other data which should be collected prior to the hearing. There may be submitted at the hearing or held in readiness in the event they become necessary for case presentation or rebuttal. Prior arbitration awards--evidence of grievance settlements, prior contracts between the same parties, data on the extent of sick leave in prior years, language of disputed provisions as found in contracts of other communities, wages and salaries of covered employees, personnel distribution charts, etc.--all of these should be carefully prepared in advance. They may well "carry the day," particularly if the data offered by the other side are less convincingly prepared or presented.

To assure the best preparation, it is helpful to anticipate fully the arguments and data that the other side will probably prepare and also to prepare effective rebuttals thereto. These may never be used, but they should be available. If persuasive enough they could even be built into the main arguments.

It should be clear to the parties that data collection is an essential element of case preparation and that it is futile exercise unless painstaking effort is made to provide these data in readily understandable and pertinent terms.

PART II

PART II

IMPASSE AND FACT-FINDING

The following is the background of material for an exercise in the process of impasse resolution and fact-finding. The substance of the material is, of course, the grist for the mill. The purpose of the exercise is not to resolve any substantive question. It is to give the participant an opportunity to take part in the process. There may be more information than is required for the specific issues and there may be less. The participants are invited to use their imagination and implement the factual material.

Each group is asked to designate a spokesman and divide the other tasks as it chooses. The group will be called into joint session by the mediator. Each group may caucus as it chooses. The mediator may ask to speak with one group or the other in private. During that time the other group may of course caucus.

Please assume that the Northwood Board of Education and the Northwood Teachers group have had a relationship for many years. The state in which Northwood happens to live has adopted a collective negotiations law which requires boards of education and the majority representative of the employees in a unit appropriate for negotiations to bargain in good faith over wages and other terms and conditions of employment. Please assume that it is October of 1975.

Issue No. 1: Salary Increase

Teachers: The teachers want a $1,200 annual increase for all teachers.

Board: The board has offered $150 plus the increment steps in the present salary guide.

Issue No. 2: Nonclassroom Duty

Teachers: The teachers want all teachers in the system to be relieved of nonclassroom duties such as lunchroom supervision and study hall.

Board: The board's position requires elementary school teachers to eat lunch with the students and to supervise the lunchroom. All other teachers are not required to eat lunch with the students or supervise the lunchroom but the board contends that elementary school children require supervision. The elementary school teachers are not required to supervise study hall but all of the high school teachers are.

Issue No. 3: Class Size

Teachers: The teachers request that the elementary school shall not require more than 32 pupils to a class. The middle school classes shall not exceed 29 pupils. No high school class shall exceed 25 pupils.

Board: The board of education has refused to accept any limitation on class size.

Issue No. 4: Dues Check-Off System

Teachers: The teachers request a contractual provision for a dues check-off system which would allow their association dues, assessments, and initiation fees to be deducted from their paychecks upon their written authorization.

Board: The board rejects the check-off system as placing an extra burden on their busy staff.

NORTHWOOD BOARD OF EDUCATION

1974 - 75

School System Statistics

A. Schools in System and Enrollments

3	Elementary Schools (K-5), enrollment	922
1	Middle School (6-8), enrollment	563
1	High School (9-12), enrollment	833
5	Schools Total enrollment	2318

B. Elementary School Professional Personnel

Teachers ------------------35
Principals ---------------- 3
Asst. Principals ---------- 0

C. Middle School Professional Personnel

Teachers ------------------26
Principals ---------------- 1
Asst. Principals ---------- 1
Counselors ---------------- 2

D. High School Professional Personnel

Teachers -----------------41
Principals --------------- 1
Asst. Principals --------- 1
Counselors --------------- 4

E. Professional Staff

Principals -------------------- 5
Asst. Principals --------------- 2
Counselors -------------------- 6
Librarians -------------------- 3
Special Education Teachers ----- 6
Learning Assistants ------------ 4
Psychologists ------------------ .8
Social Workers ----------------- 1.6
Secretaries --------------------13

F. Administration

Administrators ------------------ 3
Secretaries -------------------- 4.5

NORTHWOOD BOARD OF EDUCATION

SALARY SCHEDULE 1974-1975

STEP	Non-Degree	B.A.	M.A.	M.A.+30	Doctorate
1	8,600	10,000	10,550	11,500	12,350
2	8,900	10,350	10,900	11,825	12,700
3	9,200	10,700	11,250	12,150	13,100
4	9,500	11,075	11,625	12,550	13,550
5	9,800	11,375	12,175	13,050	14,000
6	10,100	11,700	12,575	13,400	14,400
7	10,400	12,100	12,950	13,850	14,850
8	10,700	12,500	13,375	14,275	15,350
9	11,000	12,925	13,775	14,850	15,850
10	11,300	13,350	14,200	15,375	16,400
11	11,600	13,800	14,675	15,975	17,000
12	11,900	14,275	15,325	16,600	17,600
13	12,200	15,000	16,075	17,325	18,400
14 (Max)	12,800	16,465	17,800	19,100	20,200
15 yr.	13,100	16,765	18,100	19,400	20,500
20 yr.	13,200	16,865	18,200	19,500	20,600
25 yr.	13,300	16,965	18,300	19,600	20,700

100% Health Plan coverage to employee and family when requested.

Payment for courses as per Board policy:

20 credits beyond Bachelor's and Master's degrees

10 credits beyong M + 30 scale

$20 per credit including courses being taken 1972-73 school year which have been approved

$15 per credit to be applied retroactively to all approved courses taken prior to 1972-73 school year.

The option to receive payment of $35 per credit taken up to the maximum stated in above paragraph in lieu of salary compensation referred to.

NORTHWOOD BOARD OF EDUCATION

DISTRIBUTION OF TEACHERS

by Degrees & Salary Steps

STEP	NON-DEGREE	B.A.	M.A.	M.A.+30	DOCTORATE
1		-	*2	*1	-
2		*1	*2	*1	-
3		*1	*3	1	-
4		*2	3	-	-
5		3	4	1	1
6		3	5	1	-
7		2	5	-	-
8		3	7	1	1
9		1	8	2	-
10		2	5	1	-
11		2	5	1	1
12		1	3	2	-
13		1	2	-	-
14 (max)		1	2	1	1
15		1	1	1	-
20		-	1	1	-
25		-	1	-	-

Total - 102

Non-tenured - 13

* Non-tenured Distribution on Guide

NORTHWOOD BOARD OF EDUCATION

DISTRIBUTION OF

Combined Teacher's Salaries by

Degrees & Salary Steps

STEP	NON-DEGREE	B.A.	M.A.	M.A.+30	DOCTORATE
1			21,100	11,500	
2		10,350	21,800	11,825	
3		10,700	33,750	12,150	
4		22,150	34,875	-	
5		34,125	48,700	13,050	14,000
6		35,100	62,875	13,400	-
7		24,200	64,750	-	-
8		37,500	93,625	14,275	15,350
9		12,925	110,200	29,700	-
10		26,700	71,000	15,375	-
11		27,600	73,375	15,975	17,000
12		14,275	45,975	33,200	-
13		15,000	32,150	-	-
14 (max)		16,465	35,600	19,100	20,200
15		16,765	18,100	19,400	-
20		-	18,200	19,500	-
25		-	18,300	-	-

AVERAGE SALARY: $13,757

NORTHWOOD BOARD OF EDUCATION

Distribution of Increments by Degrees & Salary Steps

1974-1975

STEP	B.A.	M.A.	M.A. + 30	DOCTORATE
1-2	350	350	325	350
2-3	350	350	325	400
3-4	375	375	400	450
4-5	300	550	500	450
5-6	325	400	350	400
6-7	400	375	450	450
7-8	400	425	425	500
8-9	425	400	575	500
9-10	425	425	425	550
10-11	450	475	600	600
11-12	475	650	625	600
12-13	725	750	725	800
13-14	1465	725	775	800
14-15	300	300	300	300
15-20	100	100	100	100
20-25	100	100	100	100

DEMOGRAPHIC DATA

I. Family Median Income -

	Northwood	Hanover County	Difference
1960	$ 7,546.	$ 6,525.	+$1,021. Median
1970	11,757.	11,981.	- 224. Median
1970 (Mean)	13,418.	12,974.	+ 444. (Mean)

Hanover County - 1970

Community	Mean	Median	Difference
Glenville	$ 16,108.	$ 14,845.	- 1,163.
New Milford	15,510.	13,703.	- 1,807.
Weston	14,662.	12,914.	- 1,748.
Oakland	14,315.	12,900.	- 1,415.
NORTHWOOD	13,418.	11,757.	- 1,661.
Farmington	12,468.	11,695.	- 773.
Riverton	10,720.	9,589.	- 1,131.
Hanover County Average	12,974.	11,981.	- 993.

II. Marital Status -

	1960			1970		
	Male	Female	Total	Male	Female	Total
Single	856	862	1718 (20%)	1565	1368	2933 (26%)
Married	2886	2932	5818 (69%)	3491	3566	7057 (61%)
Widow/Divorced	170	684	854 (11%)	240	1045	1285 (13%)
Separated				69	138	207

III. Population By Age -

	1960			1970		
	Male	Female	Total	Male	Female	Total
Under 24	1745	1712	3457	2975	2897	5872
Over 25	3482	4110	7592	3902	4611	8513
	5227	5822		6877	7508	
	11,049			14,385		

1960------------31% under 24 ------ 11.2% over 65
1970------------41% under 24 ------ 10% over 65

IV. Population by Race -

	1960		1970	
Black	194	(1.8%)	842	(5.2%)
White	10,833	(98%)	13,462	(94.3%)
Other	22	(.2%)	81	(.5%)

V. Number of Households -

1960 -- 3,623

1970 -- 5,199

VI. Number of Children Used for Allocation of Title I Funds - Federal Government Figures; AFDC, Welfare, etc.

1966 -- 113 1973 -- 197 (74% increase)

VII. Number of Children Receiving Free Lunch -

	1973	Middle	High	Total
Cleveland	3	12	7	22
Lincoln	30	20	9	59
Madison	40	22	18	80
Middle	54			
High	34			
	161			161

	1972	Middle	High	Total
Cleveland	5	4	2	11
Lincoln	46	17	9	72
Madison	35	20	14	69
Middle	41			
High	25			
	152			152

VIII. Population By Household - Relationship - Family Households

	Total In Family Household	Husband Head	Other Male Head	Female Head	Wife Head	Other Head
Northwood	12,633	3,340	115 - 14%-	424	[illegible],340	5,414
Hanover Cty	543,001	130,990	3,876	11,584	1[illegible],990	265,561

IX. Percentage of Non-Husband Headed Households

Northwood	14%
Hanover County	10.5%

SCHOOL DATA

Chart of Enrollment for the Last Six Years by Schools -

	1968	1969	1970	June 1971	1972	1973	Dec. 1973
Lincoln School ----	425	420	454	422	389	361	329
Cleveland School --	364	342	345	332	311	278	266
Madison School ----	415	418	406	397	369	350	327
Middle School -----	628	631	622	582	589	599	563
High School -------	870	922	913	866	846	834	833
TOTALS -------	2702	2733	2740	2599	2504	2422	2318

Composite Statistics -

Class	Mean I.Q. Scores	Four Year College	Two Year College	Other Schooling	Advanced Placement Percent Taking	Advanced Placement Number of Tests	Advanced Placement Average Score	College Board Mean Scores - Verbal	College Boards Math Scores - Math
1962		55%	4%	6%				479	507
1963		57%	8%	12%				495	510
1964		62%						500	533
1965		57%			16%	1.7	3.17	518	538
1966		60%			18%	1.5	3.67	532	552
1967		62%			12%	1.4	3.73	497	530
1968	112	62%	10%	7%	17%	1.5	3.63	525	538
1969	112	62%			17%	1.5	3.94	510	538
1970	112	60%			11%	2	3.94	526	537
1971	109	53%	16%	4%	8%	1.6	3.90	494	520
1972	110	57%	13%	6%	6%	1.5	3.85	496	518
1973									
1974	105.57								

III. Mean I.Q. Scores -

Year	Score	Test
1964	112	Lorge Thorndike - 9th grade
1965	112	"
1966	112	"
1967	109	"
1968	110	"
1969		
1970		
1971		
1972	105.5	SFTAA - 10th grade
1973	101.1	"

1973

	Third Grade	Fifth Grade	Eighth Grade	Tenth
Cleveland	113.9	111.8		
Lincoln	94.1	98.7		
Madison	107.5	107.7		
All Elementary	105.3	105.7		
Middle School			109.4	
High School				101.

1972

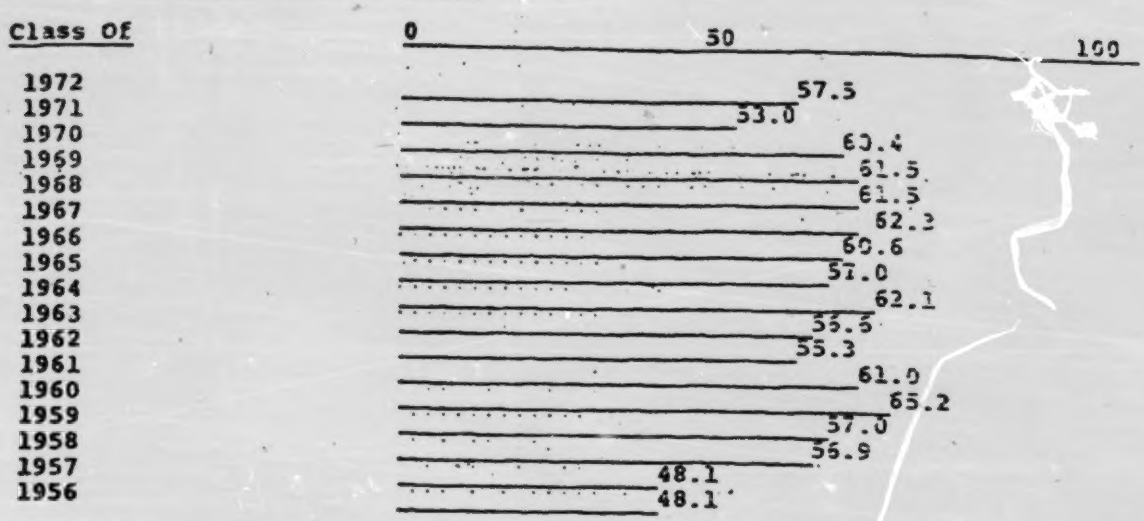
	Third Grade	Fifth Grade	Eighth Grade	Tenth
Cleveland	110.5	112.		
Lincoln	100.5	102.6		
Madison	108.94	104.4		
All Elementary	106.1	106.3		
Middle School			103.8	
High School				105.

IV. Curriculum -

Class Of	College Preparatory			Business Education			General			Did not Graduate With Class			Tot
	Boys	Girls		Boys	Girls		Boys	Girls		Boys	Girls		
	60%			16%			24%				7		
1962	48	41	89	0	25	25	25	11	36	5	5	10	15
	56%			14%			30%				7		
1963	38	46	84	0	22	22	25	21	46	9	2	11	15
	67%			7%			25%				7		
1968	70	50	120	0	12	12	10	36	46	12	0	12	17
	68%			5%			27%				7		
1971	79	68	147	0	10	10	27	31	58	11	4	15	21
	68%			5%			27%				4		
1972	70	71	141	0	11	11	33	22	55	6	2	8	20

	1972	1971	1968	1963	1962
Four Year College	57%	53%	62%	57%	55%
Junior College	13%	16%	10%	8%	4%
Other Schooling	6%	4%	7%	12%	6%
Employment	19%	24%	19%	18%	28%
Armed Forces	4%	1%	2%	1%	7%
Other - Unemployed	1%	1%		2%	
Marriage		1%		2%	

V. Percentages of High School Students who Entered Four Year Colleges Classified by Year of Graduation -



VI. Advanced Placement Records of Classes -

Year	No. of Pupils in Graduating Class	No. of Pupils Taking Tests		No. of Exams Written		Average Score
1965	337	34	(16%)	58	(1.7)	3.17
1966	157	30	(18%)	45	(1.5)	3.67
1967	173	22	(12%)	30	(1.4)	3.73
1968	167	28	(17%)	41	(1.5)	3.63
1969	223	34	(17%)	52	(1.5)	3.94
1970	220	25	(11%)	50	(2.0)	3.94
1971	215	17	(8%)	27	(1.6)	3.90
1972	219	13	(6%)	20	(1.5)	3.85

AP Grading Scale:
5-Extremely Well Qualified
4-Well Qualified
3-Qualified
2-Possibly Qualified
1-No Recommendation

VII. College Board Scores -

		Sample Size	Mean	Range	National Avg
1972 -	Verbal	152	498	230 - 760	453
	Mathematics	152	518	300 - 790	482
	English Composition	96	517	270 - 730	
1971 -	Verbal	160	494	230 - 736	
	Mathematics	160	520	260 - 800	
	English Composition	102	516	320 - 770	
1970 -	Verbal	182	526	200 - 773	
	Mathematics	182	537	258 - 800	
	English Composition	124	495	296 - 797	
1969 -	Verbal	169	510	200 - 756	
	Mathematics	169	538	234 - 792	
	English Composition	94	544	321 - 762	
1968 -	Verbal	138	525	287 - 759	
	Mathematics	138	538	328 - 800	
	English Composition	84	532	318 - 717	
1967 -	Verbal	145	497		
	Mathematics	145	530		
1966 -	Verbal	122	532		
	Mathematics	122	552		
1965 -	Verbal	151	518		
	Mathematics	151	538		
1964 -	Verbal	137	500		
	Mathematics	137	533		
1963 -	Verbal	121	495		478
	Mathematics	121	510		502
[illegible]	Verbal	104	479		
	Mathematics	104	507		

Summary -

1966 - 1972 - Verbal -36 points
Mathematics -34 points

1963 - 1972 - Verbal + 1 point
Mathematics + 8 points

National -

1963 - 1972 - Verbal -25 poi
Mathematics-20 poi

VIII. Metropolitan Readiness Test Scores -

Mean Percentiles

	1973	1972	1971	1970
Lincoln ----------	67%	65%	70%	--
Madison ----------	74%	66%	62%	52%
Cleveland --------	76.9%	84.8%	72%	73.3%

Distribution

Lincoln

	1971		1972		1973	
A	13	17%	17	28%	9	17%
B	29	38%	16	27%	18	35%
C	32	42%	16	27%	21	40%
D	2	3%	10	16%	4	8%
E	0	0%	1	4%	0	0%
	76		60		52	

Madison

	1970		1971		1972		1973	
A	8	13%	11	23%	13	21%	17	39%
B	13	21%	10	21%	17	27%	14	32%
C	23	37%	21	44%	24	39%	5	11%
D	15	24%	4	8%	8	13%	8	18%
E	3	5%	2	4%	0	0%	0	0%
	62		48		62		44	

Cleveland

	1970		1971		1972		1973	
A	11	31%	8	[illegible]	14	70%	14	54%
B	17	47%	10	[illegible]	4	20%	3	15%
C	7	19%	9	[illegible]	1	10%	9	16%
D	1	3%	3		1	10%	0	0%
E	0	0%	0	[illegible]	0	0%	0	0%
	35		30		20		26	

Totals - All Schools

	1971		1972		1973	
A	32	21%	44	31%	40	33%
B	49	32%	37	26%	35	29%
C	62	41%	41	29%	35	29%
D	9	5%	19	13.5%	12	9%
E	2	1%	1	.5%	0	0%

IX. C.T.B.S. - Below Grade Level

April, 1973

Actual Grade	Number of Grades Below	Cleveland	Lincoln	Madison
	1 - 2	0	15	5
	2 - 3	0	7	1
3.7	3+	0	0	0
	Lowest	3.2 (N 57)	1.0 (N66)	1.4 (N 66
	Per cent	.0%	33.3%	10.6%
	1 - 2	0	17	5
	2 - 3	0	5	1
4.7	3+	0	1	1
	Lowest	3.9 (N 50)	1.6 (N 70)	1.0 (N 60
	Per cent	0%	32.9%	11.6%

IX. C.T.B.S. - Below Grade Level (continued)

April 1973

Actual Grade	Number of Grades Below	Cleveland	Lincoln	Madison
	1 - 2	4	19	8
	2 - 3	1	3	4
5.7	3+	0	3	0
	Lowest	3.4	1.0	2.3
	Percent	10.8% (N 46)	42% (N 59)	19.5% (N 63
		May 1972		
	1 - 2	2	12	15
	2 - 3	1	3	3
3.8	3+	0	0	0
	Lowest	1.8	1.4	2.4
	Percent	5.7% (N52)	21.4% (N 70)	30.5% (N 59)
	1 - 2	5	12	12
	2 - 3	1	6	4
5.8	3+	1	1	0
	Lowest	1.9	1.0	3.2
	Percent	11.3% (N 62)	31.6% (N 60)	23.6% (N 68)

X. Estimate of Students Below Grade Level -- 1 - 5 - 1973 - 74

	Reading	Math
Lincoln----------	30%	25%
Madison----------	40%	20%
Cleveland--------	22%	13%

XI. Number of Students on Medication -- K-5 - 1973-74

Lincoln--------------4
Madison--------------9
Cleveland------------2

XII. Foreign Speaking Students -

School	Number	Languages	Program
High School	4	Greek	
	5	Spanish	
	1	Israeli	
	10		
Middle School	2	Greek	Mrs. Holdowsky (1 hr./day)
	1	Yugoslavian	Douglas tutor
	1	Italian	C. Borri
	4		
Cleveland	2	Greek	Tutor
	2	Arabs	Tutor - Kgn. Aide
	2	Yugoslavian	Rutgers "Big Brother"
	6		
Madison	1	Hindu	Individual classroom teachers work with these students
	2	Greek	
	3		

XII. Foreign Speaking Students - continued

School	Number	Languages	Program
Lincoln	1	Yugoslavian	Media Center (3 days/
	1	Chinese	Distar Reading Progra
	1	Italian	In regular class - progressing
	3	Greeks	High School tutor (Average 1/2 hr./day
	6		

XIII. Number of Children Referred to Special Services and their Subsequent Disposition -

Number Referred		1 O.H.	2 A.H.	3 EX.	4 ED.	5 TRAIN	6 N.I.	7 E.D.	8 P.I.	9 V.H.	Total Classified
1968					7		3				10
1969				1	12	1	7	7	14	1	43
1970	(Incomplete Records)		1		3	1	3	1			
1971	69	1	1	1	7	3	2	4	6		25
1972	55				5	1	2	5	7		20
1973	46				2	1	5	5	11		24

1. Orthopedically Handicapped
2. Auditorally Handicapped
3. Excluded Handicapped
4. Educable
5. Trainable
6. Neurologically Impaired
7. Emotionally Disturbed
8. Perceptually Impaired
9. Visually Handicapped.

XIV. Northwood Students Placed in Special Classes -

Year	Outside the District	Within the District	Total
1965-66 --------------	11	1	12
1966-67 --------------	14	1	15
1967-68 --------------	11	6	17
1968-69 --------------	19	9	28
1969-70 --------------	21	19	40
1970-71 --------------	24	23	47
1971-72 --------------	30	26	56
1972-73 --------------	19	40	59
1973-74*--------------	20	40	60

* Estimated

BUDGET SUMMARY

NORTHWOOD PUBLIC SCHOOLS

PROPOSED 1974-75 SCHOOL BUDGET

Account Description	1973-74	1974-75	Increase	Reasons
Administration:				
Salaries:				
Administrators (3) Secretaries (4½) Custodian, School Funds	123,936.00	130,125.00	6,189.00	Increments. salary raises $7,000 of Admin. Asst. salary reimbursed by State
Contracted Services, Auditor, Legal	6,200	6,500.00	300.00	Increase for auditor
Central Office Expenses State Board dues, Supplies, Postage, election expenses, other office expenses	16,175.00	18,865.00	2,690.00	State Board dues increase mandated by law, postage increase, spply costs, advertising.
TOTAL	146,311.00	155,490.00	9,179.00	
Instruction				
Salaries, Principals 5 Principals, 2 Asst. Principals	169,556.00	183,542.00	13,986.00	Contracted Increases
Salaries, Teachers (102) Substitutes, Supplemental, Para professionals, teacher aides, summer school.	1,510,482.00	1,597,072.00	86,590.00	Increments, raises. No final salary agreement at this time. Lunch room aides.
Salaries, Other Instruction-- 6 Guidance, 3 Librarians, 6 Special Education teachers 4 learning assistants; .8 Psychologist, 1.6 Social workers	376,017.00	420,400.00	44,383.00	Increments, raises; 1 additional teacher; 1 additional day for Social Worker.
Salaries, Secretaries (13)	100,764.00	106,700.00	5,936.00	Increments, Cost of living increases.
Textbooks	29,127.00	29,405.00	278.00	
Library	17,950.00	17,470.00	480.00	Increased costs and increased supplies.
Audio Visual	24,610.00	27,250.00	2,640.00	
Instructional Supplies	62,710.00	67,905.00	5,195.00	Increased costs of same materials.
Other Instructional Expenses Office supplies, professional books, travel expenses, Data Processing, Outdoor Ed. unit, Testing, Curriculum Studies	39,300.00	39,950.00	650.00	Computer for instruction costs, increased costs of al
Total	2,330,516.00	2,489,694.00	160,138.00	

Account Description	1973-74	1974-75	Increase	Reasons
Health Services				
Salaries, staff (5 nurses, part-time doctor	64,422.00	69,850.00	5,428.00	Increments, cost of living increases
Other expenses, health supplies	3,800.00	3,825.00	25.00	
TOTAL HEALTH SERVICES	68,222.00	73,675.00	5,453.00	
Transportation				
Salaries, 3 bus drivers	9,720.00	15,000.00	5,280.00	Additional driver
Contracted services	26,500.00	28,500.00	2,000.00	Additional routes, increased contract costs.
Vehicle addition		7,500.00	7,500.00	16 passenger bus for Special Ed., athletics, field trips.
Field trips, all schools	20,500.00	23,975.00	3.475.00	Increased costs of buses.
Other expenses, insurance, repairs, gasoline	3,750.00	3,750.00		
TOTAL TRANSPORTATION	60,470.00	78,725.00	18,255.00	75% of transportation costs for handicapped students reimbursed by State.
Operation of Plant				
Salaries, custodians (22) substitutes, part-time, DEAL	208,604.00	225,403.00	16,799.00	Increments, cost of living increases
Heat	65,000.00	75,000.00	10,000.00	Increased cost of oil
Water, Sewer	4,000.00	4,000.00	--	
Electricity	55,000.00	60,000.00	5,000.00	Increased cost of electricity
Telephones	14,000.00	16,000.00	2,000.00	Increased costs.
Custodial supplies	16,000.00	18,000.00	2,000.00	Price increases
TOTAL OPERATION OF PLANT	362,604.00	398,403.00	35,799.00	

Account Description	1973-74	1974-75	Increase	Reasons
Maintenance				
Salaries, (4) summer help	46,402.00	47,673.00	1,271.00	Increments, cost of living increase
Contracted Services, Athletic fields, oil burner service, general repairs	21,550.00	22,500.00	950.00	Increased costs
Equipment replacement	23,300.00	23,700.00	400.00	Planned replacement program
New Equipment	27,500.00	25,400.00	2,100.00	Normal additional equipment for schools
Maintenance supplies, paint, glass, custodial supplies	23,750.00	24,750.00	1,000.00	Increased costs
TOTAL MAINTENANCE	142,502.00	144,023.00	1,521.00	
Fixed Charges				
Retirement	35,000.00	35,000.00		
Social Security	27,000.00	30,000.00	3,000.00	Increased costs
Local Pensions	2,000.00	2,000.00		
Insurance; Health, Workmen's Compensation, multi-peril Auto liability, Athletic	107,500.00	128,500.00	21,000.00	Increased costs Health Plan
Tuition	85,000.00	85,000.00		
TOTAL FIXED CHARGES	256,500.00	280,500.00	24,000.00	
Food Service	4,000.00	8,000.00	4,000.00	Increased Costs
Student Activities				
Salaries	38,718.00	42,541.00	3,823.00	Additional soccer, tennis, raises
Other expenses, clubs, graduations, assemblies	9,875.00	10,500.00	625.00	Increased costs
Interscholastic athletics boys and girls	26,000.00	37,000.00	11,000.00	soccer, girls tennis increased costs, officials, equipment
Drama	7,000.00	7,000.00		

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Account Description	1973-74	1974-75	Increase	Reasons
Community Services				
Salaries, Recreation and Adult School	3,250.00	3,200.00	- 50.00	Maintain present program
TOTAL CURRENT EXPENSES	$4,211,209.00	4,527,287.00	316,078.00	
Capital Outlay				
Remodeling windows, ceilings, flooring	15,000.00	35,000.00	20,000.00	Continued replacement of windows; repair ceilings, replace floors.
Built-in Equipment, Public Address system auditorium, Middle School	10,000.00	10,500.00	500.00	Sound system for auditorium, Middle School
TOTAL CAPITAL OUTLAY	25,000.00	45,500.00	20,500.00	
Debt Service				
Principal	147,000.00	152,000.00	5,000.00	Continue reduction of debt.
Interest	175,943.50	170,368.50	- 5,575.00	
TOTAL DEBT SERVICE	322,943.50	322,368.50	- 575.00	
TOTAL BUDGET	$4,559,152.50	$4,895,155.50	336,003.00	

REVENUE

	1973-74	1974-75	Increase	Percent
Borough Taxes				
Current Expense	3,559,958.00	3,958,208.00	398,250.00	
Capital Outlay	25,000.00	45,500.00	20,500.00	
Debt Service	285,015.50	284,440.50	- 575.00	
Total	3,869,973.50	4,288,148.50	418,175.00	10.8
State Aid				
Formula	365,350.00	359,651.00	-5,699.00	
Transportation	22,388.00	24,582.00	2,194.00	
Atypical	155,513.00	148,846.00	-6,667.00	
Building Aid	37,928.00	37,928.00	--	
Total	581,179.00	571,007.00	- 10,172.00	
Investments	10,000.00	12,000.00	2,000.00	
Miscellaneous	13,000.00	12,000.00	- 1,000.00	
Surplus Appropriation	85,000.00	----	- 85,000.00	
Tuition		5,000.00	5,000.00	
Federal Aid		7,000.00	7,000.00	
Total	4,559,152.50	4,895,155.50	336,003.00	7.37

BUDGET PERCENTAGES

	1973-74	1974-75
Administration	3.21	3.18
Instruction	67.68	67.17
Health Services	1.50	1.51
Transportation	1.33	1.61
Operation of Plant	7.95	8.14
Maintenance	3.13	2.94
Fixed Charges	5.63	5.73
Cafeteria	.08	.15
Student Activities & Community Services	1.86	2.05
Capital Outlay	.55	.93
Debt Service	7.08	6.59

FEDERAL FUNDS RECEIVED - 1973-74

Title I	$ 73,333.00	
Title II	3,162.25	
Adult Education	7,811.00	
Introduction to Vocations	400.00	
DEAL	2,624.00	
Cooperative Education	2,064.00	
Federal Lunch Subsidy	35,000.00	(estimate)

FEDERAL FUNDS RECEIVED - 1973-74
CONTINUED

Mini grant	800.00
Surplus Materials	7,477.00
Total	$132,671.25

TAX USE COMPARISON

Per cent of local taxes used for schools

Year	Schools	Local	County
1966	64.5	18.4	14.8
1968	65.4	18.9	13.7
1970	73.8	10.1	14.4
1971	72.9	10.1	15.4
1972	67.0	13.0	19.0
1973	66.6	18.9	13.2
1974	65.5	20.4	12.9
Hanover County Average 1974	66.6		

Local Tax Costs For Schools and Municipality

Year	Schools	Municipal
1970	$2,890,398.93	$ 374,557.72
1971	3,223,705.22	427,941.00
1972	3.539,434.75	953,182.00
1973	3,710,420.25	1,039,513.00
1974	3,869,973.50	1,191,864.29

Per Cent of Budget Increase - Local Tax Use

1971	11.5	14.0
1972	9.8	122.7
1973	4.8	9.0
1974	4.3	14.7

Total Budget Increase

1971	10.5	12.8
1972	8.8	9.1
1973	5.0	10.3
1974	8.0	9.5
1971-74 Average	8.1	10.4

Budget Increase Over the Same Five Year Period

36.2	48.6

PRICE INCREASE COMPARISONS -- 2 YEAR SPAN

Item	1971-72		1973-74	
Gas & Electric	price per kilo	3.3¢	price per kilo	5.3¢
	kilo	1,408,406	kilo (est.)	1,259,670
	Cost	$47,793.61	Cost (est.)	$65,453.05
Telephone		10,872.19	(est.)	13,800.00
Heating	per gal.	.1089	per gal.	.3863
	Total gallons	285,328	Est. Total gals.	240,750
	Cost	34,266.56	Cost (Est.)	90,000.00
Paint				
Floor guard	grey	3.33 per gal	grey	5.15 per gal.
	red	3.51 " "	red	5.60 " "
	green	3.51 " "	green	5.60 " "
School Furniture				
60" round table		95.75		111.41
60" octagon table		98.65		116.81
48" square		79.75		100.23
Chairs		7.50		8.55
Slimline bulletin boards		31.00		55.50
Office Supplies				
Duplicating fluid		1.18 per gal.		2.00 per gal.
Stencils		3.80 per box		10.40 per box
Mimeo paper 8½ x 11		.89 per ream		2.16 per ream
8½ x 14		1.13 " "		2.74 " "
(Colored) 8½ x 11		.99 " "		2.29 " "
8½ x 14		1.25 " "		2.91 " "
Duplicating paper		.80 " "		2.19 " "
Bond Paper		2.90 " "		5.90 " "
Audio Visual				
Projector		409.00		440.00
Cassette Recorder		59.95		72.95
Projector Bulbs BLC		.60		1.64
DKM		3.30		5.61

PRICE INCREASE COMPARISONS -- 2 YEAR SPAN continued

Textbooks

Intorductory Algebra	4.50	5.40
Our Langauge Today	3.69	4.08
Foundation of Chemistry	6.90	9.15

COMPARISON BUDGET INCREASES IN OUR AREA

	Per cent increase
Talmyra	18.9
Edmund	15.0
Stanton	14.9
Greensboro	14.6
Eugene	14.0
Cliffside	11.7
Brookline	10.8
Middlebury	10.5
East Stanton	10.4
Glenville	10.3
Centerville	10.2
Oakland	9.76
Farmington	9.5
Stonycreek	9.2
Jefferson	8.0
Somerset	8.0
Sutliff	7.9
Northwood	7.37
Peyton	7.0
New Milford	6.67
Linwood	5.7

At the Harrisburg Conference the role playing exercise was tried with three groups. Each group had the benefit of a skilled mediator.

Group I - Found dues check off and class size to be the important issues. The group settled for a 6% salary increase plus increments, The Board agreed to dues check off. A commitment was made that there would be no increase in class size the first year of the contract and a joint committee would study the problem.

Group II - Settled for 8.2% salary increase. However 10 teachers lost their jobs as a result of the negotiations. Dues check off was important and the Board agreed to it. Class size was to be studied.

Group III - Group III was unable to settle and the result was an impasse. After mediation failed the mediator functions as a fact finder.

PART III

INFORMATION SOURCES
ON
COLLECTIVE NEGOTIATIONS FOR EDUCATORS

Until the mid-1960s educational negotiators - and, indeed, public sector negotiators generally - depended almost entirely on private sector experiences for resource materials. Since that time there has been a gradual expansion of information sources in public sector labor relations, some of it broad-based in nature and some of it directed specifically to the needs of special interest groups. This paper describes briefly those significant sources having general applicability to public education collective negotiations.

Basic Information Services

Probably the most widely consulted publication providing "current awareness" information is the Bureau of National Affairs' weekly Government Employee Relations Report. A typical issue of this publication is devoted to news on federal, state and local issues, contract settlements, court decisions and arbitration awards. In addition, it regularly contains a calendar of events, statistical compilations on public employee-employer relations and the full text of noteworthy contracts. As a supplement to the weekly report a reference file is provided having texts of federal and state legislation, administrative decisions, basic statistical data and contract clause provisions.

A somewhat similar publication, although more limited in its coverage, is the two volume loose-leaf service Public Personnel Administration - Labor Management Relations, issued by Prentice-Hall, Inc. It includes bi-weekly current news along with how-to-do-it sections on collective bargaining problems. One of the volumes is devoted entirely to federal and state-by-state laws, rules and procedures.

In the education field Educational Service Bureau publishes Educators Negotiating Service on a bimonthly basis. This service reports on developments in public education collective negotiations throughout the country, legislative and judicial acitivities and contract settlements. Special features include the complete text of significant court decisions, fact finding reports, collective bargaining agreements and research reports.

Associations and Research Organizations

Contributing to public sector information sources are many associations and research organizations. Publications of some of these organizations are restricted to the membership but a major portion of the material is generally available.

Typical of these is Labor-Management Relations Service of the National League of Cities, United States Conference of Mayors and National Association of Counties. This Service issues the monthly LMRS Newsletter, reporting current developments, news on pertinent court decisions, reports from particular communities and notices of new publications. Among its other publications are the LMRS Contract Clause Manual and special reports on such subjects as productivity bargaining, arbitration, the role of politics in local labor relations and employee benefit surveys. Equally important is the International Personnel Management Association, publishers of the bimonthly journal Public Personnel

Management which, in recent issues, had articles on contract interpretation, bargaining strategy and management rights. Research reports issued by this Association deal with a diversity of topics such as final offer arbitration, union representation, mediation and factfinding and scope of bargaining.

In arbitration American Arbitration Association provides two loose-leaf services - *Labor Arbitration in Government*, and *Arbitration in the Schools*. Both of these monthly publications include digests of awards and fact-finding opinions of interest to negotiators.

From the national education professional associations come an increasing amount of public sector information, some of it in monographic form and much of it in the journals of the associations. Among these are the Association of Educational Negotiators with its monthly *AEN Bulletin* containing articles on latest developments in negotiations; the National Education Association and its *Collective Bargaining Quarterly* (restricted circulation) having position papers, contract analyses, wage data and court, board and arbitration decisions; and the American Association of School Administrators with its varied publications including such handbooks as *Helping Administrators Negotiate* and *Work Stoppage Strategies*.

On a state level educational associations often are the only sources of information that will satisfy local needs. From them frequently it is possible to obtain statistics, contract provisions and procedural information peculiar to a particular state. Using New Jersey as an example one notes that the New Jersey School Boards

Association, as a service to its members, publishes on a regular basis *Negotiations News and School Law Reporter* as a vehicle to keep its readers up-to-date on pertinent public sector bargaining matters. In addition it publishes from time to time substantive reports such as its recent guide *Collective Negotiations* , a volume in the series, What Every School Board Member Should Know. From New Jersey Education Association, an affiliate of the National Education Association, flows the monthly publications *NJEA Review* and *NJEA Reporter* as well as a number of research publications. These include annual studies of salary guides, fringe benefits, teacher economic status and contract provisions.

Although not an association, but rather a labor union, the American Federation of Teachers and its local affiliates are sources of useful information. The national organization publishes each month *American Teacher* covering labor relations issues as well as a broad spectrum of educational interests. Other publications from the AFT include an annual survey of teacher salaries, position statements on economic matters and guides to collective bargaining laws.

Administrative Agency Decisions

The decisions of state public sector labor relations administrative agencies as key documents on a rapidly growing field of labor law are available initially from the agency itself. In a few instances, notably New York and Wisconsin, indexes and/or digests of thes decisions are issued by the agencies. For some states such as New Jersey, Pennsylvania and Massachusetts, commercial publishers have appeared with topical, classified index/ digests. The Legal Intelligencer publishes New Jersey Public Employee Reporter and Pennsylvania Public Employee Reporter, both services including appropriate statutes, court cases and agency decisions. They permit the researcher to locate case precedents on any topical issue. Newly available is the Massachusetts Labor Relations Reporter reporting activity before the Massachusetts Labor Relations Commission and the Massachusetts Board of Conciliation and Arbitration. A companion to this Reporter is Massachusetts Labor Cases, a service that provides the full text of decisions issued by the Commission.

U.S. Government Information Sources

An excellent source of resource material is the federal government which publishes a variety of information. Its departments, bureaus and divisions collect and disseminate much economic and statistical data pertinent to public sector labor relations.

A major source of statistical information is the Bureau of Labor Statistics, one of its most well-known publications being the Consumer Price Index which is the basis for escalator clauses in collective agreements. Although most of its publications are directed to private sector interests, in recent years BLS has devoted increasing attention to state and local government matters. This is reflected in such studies as Grievance and Arbitration Procedures in State and Local Agreements (Bulletin 1833, 1975), Characteristics of Agreements in State and Local Governments, January 1, 1974 (Bulletin 1861, 1975) and its Work Stoppages in Government series. Recent issues of the Bureau's important

Monthly Labor Review has carried articles on impasse resolution in public employee bargaining and federal mediation in the public sector. Also of interest to the negotiator will be the *Municipal Government Surveys* which are issued periodically for major cities by the regional offices of the Bureau.

Another federal source of statistics is the Bureau of the Census which has a governmental statistics publication program. Based on the census of governments taken every five years this program has resulted in statistical studies of government organization, government finaces and taxable property values. One of the area covered is public employment from which came the study *Management-Labor Relations in State and Local Governments*. This publication includes statistics on labor relations policies, extent of employee organization and work stoppages. Supplementary data provided on annual and quarterly bases provide statistics on public employment and payrolls, public employee retirement systems, city employment, local government finances and local government employment.

An additional source of information on public sector labor relations is the Division of Public Employee Labor Relations, Labor Management Services Department. This agency has issued several publications on state statutes, regulatory policies and dispute settlement. Among them are *Summary of State Policy Regulations for Public Sector Labor Relations*, *A Directory of Public Employment Relations Boards and Agencies* and two publications authored by Arnold Zack, *Understanding Fact Finding and Arbitration in the Public Sector* and *Understanding Grievance*

Arbitration in the Public Sector.

Lastly note should be made of the resources available through the ERIC program. Numerous reports, studies and guides on labor relations in education have been submitted to the ERIC educational network system. Access to this system can be gained throught the monthly abstract journal Research In Education and Current Index to Journals in Education which is a complete guide for current awareness of all important educational periodical literature.

Universities As Sources Of Information

With the development of industrial relations institutes and centers on university campus extensive publications programs also came into being. Most of these originally concentrated on the private sector but, in recent years, they began to devote more time to research on public sector collective bargaining as the demand for basic information grew. Some of the universities issue newsletters and periodicals to provide up-to-date information on public sector labor relations directed to the needs of their own state or area. Among these are, Iowa Public Employer-Employee Relations (University of Iowa), a periodic information newsletter with news on Iowa's Public Employment Relations Board decisions, general information for the practitioner and notes on public employee relations literature; California Public Employee Relations (University of California, Berkeley), a quarterly publication with feature articles, recent developments in California public jurisdictions and full text of significant Californis documents. This quarterly periodical is supplemented by the CPER Bulletin which is designed to provide up-to-date news between quarterly issues of the periodical; New Jersey Public Employer-Employee Relations (Rutgers University) is an occasional information bulletin that reports on decisions of the Public Employment Relations Commission, New Jersey notes on public sector matters and current literature. Occasionally this bulletin includes supplements which report on public sector research in New Jersey. Between issues an Information Note is published to provide information on matters of immediate interest; Midwest Monitor (Indiana University) is a publication designed to serve public sector labor relations practitioners in the states of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin. Each issue focuses on a current topic in labor relations, featuring news notes, discussion and an annotated bibliography.

Most universities with industrial relations institutes have made a conscious effort to furnish publications useful to researchers and practitioners in public sector labor relations. These universities have issued studies on such subjects as fact finding, public employee budget negotiations, bargaining unit determination, teacher-school board relations, arbitrability, good faith bargaining and bargaining techniques. Some of the universities with major public sector information activities are found in the organization list at the end of this paper.

Organization Addresses

American Arbitration Association
140 W. 51 Street
New York, NY 10020

American Association of School Administrators
1801 N. Moore Street
Arlington, VA 22209

American Federation of Teachers
1012 Fourteen Street, N.W.
Washington, DC 20005

Association of Educational Negotiators
1835 "K" Street, N.W.
Washington, DC 20006

Bureau of National Affairs, Inc.
1231 Twenty-fifth Street, N.W.
Washington, DC 20037

Educational Resources Information Center (ERIC)
National Institute of Education
Washington, DC 20208

Educational Service Bureau, Inc.
1835 "K" Street, N.W.
Washington, DC 20006

International Personnel Management Association
1313 East 60 Street
Chicago, IL 60637

Labor-Management Relations Service
1620 "I" Street, N.W.
Washington, DC 20006

The Legal Intelligencer
66 N. Juniper Street
Philadelphia, PA 19147

Massachusetts Labor Relations Reporter
Suite 1300
140 Federal Street
Boston, MA 02110

National Association of Secondary School Principals
1904 Association Drive
Reston, VA 22091

National Education Association
1201 Sixteen Street, N.W.
Washington, DC 20036

(continued)

Organization Addresses (cont.)

New Jersey Education Association
180 W. State Street
Trenton, NJ 08608

New Jersey School Boards Association
383 W. State Street
Trenton, NJ 08605

Prentice-Hall, Inc.
Englewood Cliffs, NJ 07632

U.S. Department of Commerce
Bureau of the Census
Washington, DC 20230

U.S. Department of Labor
Bureau of Labor Statistics
Washington, DC 20210

U.S. Department of Labor
Labor Management Services Administration
Division of Employee Labor Relations
Washington, DC 20210

Universities

Cornell University
New York State School of Industrial and Labor Relations
Ithaca, NY 14850

Indiana University
Midwest Center for Public Sector Labor Relations
School of Public and Environmental Affairs
400 East Seventh Street
Bloomington, IN 47401

Michigan State University
School of Labor and Industrial Relations
403 S. Kedzie Hall
East Lansing, MI 48823

Princeton University
Industrial Relations Section
Princeton, NJ 08540

Purdue University
Krannert Graduate School of Industrial Administration
West Lafayette, IN 47907

Rutgers-The State University of New Jersey
Institute of Management and Labor Relations
Van Nest Hall
New Brunswick, NJ 08903

Universities (cont.)

University of California
Institute of Industrial Relations
Berkeley, CA 94720

University of Hawaii
Industrial Relations Center
College of Business Administration
2404 Maile Way
Honolulu, Hawaii 96822

University of Illinois
Institute of Labor and Industrial Relations
504 E. Armory Avenue
Champaign, IL 61820

The University of Iowa
Center for Labor and Management
College of Business Administration
Phillips Hall
Iowa City, IO 52242

University of Michigan - Wayne State University
Institute of Labor and Industrial Relations
108 Museum's Annex
Ann Arbor, MI 48104

University of Wisconsin
Industrial Relations Research Institu
4226 Observatory Drive
Madison, WS 53706

University Extension Division

Institute of Management and Labor Relations Library
Rutgers - The State University

IMPASSE RESOLUTION
(A Reading List)

General

Anderson, Arvid
"Strikes and impasse resolution in public employment." Michigan Law Review, March 1969, pp. 943-970.

Bain, Trevor
"Third pary settlement in education." Arbitration Journal, v. 26, #1, 1971, pp. 41-44.

Clark, Theodore
Coping with mediation, Fact Finding and Forms of Arbitration International Personnel Management Association, 1973. 52pp.

"Conflict resolution and the superneutral." Government Employee Relations Report: Reference File, v. 61, 1973 pp. 521-525.

Davey, Harold W.
"The use of neutrals in the public sector." Labor Law Journal, August, 1969, pp. 529-538.

Drotning, John E. and David Lipsky
"The outcome of impasse procedures in New York schools under the Taylor Law." Arbitration Journal, v. 26, #2, 1971, pp. 87-102.

Gilroy, Thomas P. (editor)
Dispute settlement in the public sector. University of Iowa, Center for Labor and Management, 1972. 59pp.

Gilroy, Thomas P. and Anthony Sinicropi
Dispute settlement in the public sector; the state of the art. U.S. Department of Labor, 1972, 141pp.

Gould, William
"Public employment: mediation, factfinding, and arbitration." American Bar Association Journal, v. 55, 1969, pp. 835-841.

Helsby, Robert
"Resolution of public sector disputes." In Proceedings of the Conference on Government Employees and Collective Bargaining: Hawaii Perb, Year One, University of Hawaii, Industrial Relations Center, 1970, pp. 15-24.

Hildebrand, George
"The role of the neutral in public employment disputes; the resolution of impasse." In proceeding of the 20th Annual Meeting of the National Academy of Arbitrators, Bureau of National Affairs- 1967, pp. 287-298.

Howlett, Robert G.
"Impasse resolution and strikes." California Public Employee Relations, March 1972, pp. 25-30.

Hughes, W.F.
"Impasse procedures." Pennsylvania School Journal, May 1975, pp. 156-161.

IMPASSE RESOLUTION

Kleinsorge, Paul and Lafayette Harter
"Criteria for impasse resolution in public employee labor disputes: an economic analysis." Oregon Law Review, v. 51, #1, 1971, pp. 207-213.

Lieberman, Myron
"What to do when the talks break down in teacher impasses." School Management, April 1969, pp. 25-28.

Moberly, Robert B.
"Causes of impasse in school board-teacher negotiations." Labor Law Journal, October 1970, pp. 668-677.

Neal, Richard G.
Resolving negotiations impasses in public education. Educational Service Bureau, 1970, 64pp.

Rains, Harry H.
"Dispute settlement in the public sector." The Urban Lawyer, Fall 1969, pp. 3-6.

Ross, Thomas C.
Impasse resolution systems; legal basis and applicability in negotiating with teacher organizations in California. University of Southern California, Phd. Dissertation, 1971, 212pp.

Slavney, M.
"Impasse procedures in public education." In Elam, S.M. and others, Readings on Collective Negotiations in Public Education, Rand McNally, 1967, pp. 426-432.

Staudohar, Paul
"Disputes and dispute settlement in public employment." Economic and Business Bulletin, Winter 1971, pp. 37-43.

Stuts, Robert
"The resolution of impasse in the public sector." The Urban Lawyer, Fall 1969, pp. 3-6.

Tanimoto, Helene S.
Guide to statutory provisions in public sector collective bargaining; impasse resolution procedures. University of Hawaii, Industrial Relations Center, 1973, 104pp.

Van Asselt, Karl A.
"Impasse resolution." Public Administration Review, March-April 1972, pp. 2-26.

Zack, Arnold
"Dispute settlement in the public sector." New York Law Forum, Summer 1968, pp. 249-260.

Mediation

Bennett, George
"New horizons for mediation." Personnel, January-February 1974, pp. 43-52.

Foegen, J.H.
"Mediation from initiation: hope for public labor disputes." Public Personnel Review, January 1970, pp. 7-12.

Maggiolo, Walter
Techniques of mediation in labor disputes. Oceana Publications, 1971, 192pp.

Newman, Harold
"Some frank talk on mediation, fact-finding." LMRS Newsletter, January 1974, pp. 3-4.

Odewahn, Charles
"The mediator in the public sector - a new breed?" Labor Law Journal, October 1972, pp. 643-648.

Simkin, William E.
Mediation and the dynamics of collective bargaining. Bureau of National Affairs, 1971, 410pp.

Staudohar, Paul D.
"Some implications of mediation for resolution of bargaining impasses in public employment." Public Personnel Management, July 1973, pp. 299-304.

Turan, Kenneth
"The mediator's magic." Educators Negotiating Service (Special Report), December 1, 1974, pp. 1-5.

Weggeland, Daniel
"Mediator's role in collective bargaining." Fairleigh Dickinson University Business Review, Winter 1969, pp. 3-9.

Zack, Arnold
"Improving mediation and factfinding in the public sector." Labor Law Journal, May 1970, pp. 259-273.

Fact-finding

Anderson, Arvid
"The use of factfinding in dispute settlements." In Proceedings of the 22nd Annual Meeting of the National Academy of Arbitrators, Bureau of National Affairs, 1970, pp. 182-186.

Anderson, Wayne F. and others
Fact-finding in the public sector - a case study. Public Personnel Association, 1970, 45pp.

Bornstein, Tim
Facts about fact-finding. Labor Management Relations Service, 1971, 23pp.

Finkelman, Jacob
"Fact finding; its values and limitations, a comment." In Proceedings of the 23rd Annual Meeting of the National Academy of Arbitrators, Bureau of National Affairs, 1970, pp. 182-186.

Gatewood, Lucian
"Fact finding in teacher disputes; the Wisconsin experience." Monthly Labor Review, October 1974, pp. 47-51.

Howlett, Robert G.
"Fact finding; its values and limitations, a comment." In Proceedings of the 23rd Annual Meeting of the National Academy of Arbitrators, Bureau of National Affairs, 1970, pp. 175-182.

Jossen, Robert J.
"Fact-finding; is it adjudication or adjustment?" Arbitration Journal, v. 24, #2, 1969, pp. 106-115.

Krinsky, Edward B.
An analysis of fact-finding as a procedure for the settlement of labor disputes involving public employees. University of Wisconsin, Ph.D. Dissertation, 1969. No paging.

Marshall, Phillip G.
"Fact-finding in public employment disputes; promise or illusion?" *Industrial and Labor Relations Review*, July 1969, pp. 528-543.

Rehmus, Charles M.
Fact-finding and the public interest. Cornell University, New York State School of Industrial and Labor Relations, 1974, 17pp.

Roumell, G.T.
"Fact finding can unblock bargaining impasse." *Nation's Schools*, March 1970, pp. 77-79.

Saxton, William M.
"The use of fact-finding in public employee disputes settlements; the employers view." In *Proceedings of the 22nd Annual Meeting of the National Academy of Arbitrators*, Bureau of National Affairs, 1970, pp. 127-130.

Schmidt, Charles T.
"Observations of the process of factfinding in Michigan public education, Teacher-board contract disputes." In *A Report of the Association of Labor Mediation Agencies and the National Association of State Labor Relations Agencies*, Bureau of National Affairs, 1968, pp. 81-90.

Seamon, Harold
Fact finding in the resolution of teacher organization - school board impasse during collective negotiations, with particular reference to New York State. Columbia University, Ed.D., 1971, 254pp.

Seamon, Harold P.
"Factfinding in the public sector." *Journal of Collective Negotiations in the Public Sector*, Spring 1974, pp. 121-132.

Simkin, Willian E.
"Fact finding; its values and limitations." In *Proceedings of the 23rd Annual Meeting of the National Academy of Arbitrators*, Bureau of National Affairs, 1970, pp. 165-174.

Staudohar, Paul
"Fact-finding for settlement of teacher labor disputes." *Phi Delta Kappan*, April 1970, pp. 422-425.

Taylor, George W.
"Using factfinding and recommendation in impasse." *Monthly Labor Review*, July 1969, pp. 63-65.

Word, William R.
"Factfinding in public employee negotiations." *Monthly Labor Review*, February 1972, pp. 60-64.

Word, William R.
"Implications for fact finding - The New Jersey experience." *Journal of Collective Negotiations in the Public Sector*, Fall 1974, pp. 339-343.

Wurf, Jerry
"The use of fact-finding in public employee disputes settlement--the union view." In *Proceedings of the 22nd Annual Meeting of the National Academy of Arbitrators*, Bureau of National Affairs, 1970, pp. 95-106.

Yaffee, Bryon and Howard Goldblatt
Factfinding in public employment in New York State; more promise than illusion. Cornell University, New York State School of Industrial and Labor Relations, 1971, 132pp.

Zack, Arnold
Understanding fact-finding and arbitration in the public sector. U.S. Department of Labor, 1974, 38pp.

Films On Public Sector Collective Bargaining

ANATOMY OF A GRIEVANCE. U.S. Civil Service Commission. 1974. 22 min. Distribution by U.S. National Audiovisual Center.

Depicts the processing of an employee grievance over interpretation and application of an agreement clause. The setting is a public hospital.

ARBITRATION OF A GRIEVANCE. U.S. Civil Service Commission. 1974. 36 min, Distributed by U.S. National Audiovisual Center.

As a sequel to "Anatomy of a Grievance" teaches persons handling arbitration cases the techniques of preparation and presentation.

AT THE TABLE. U.S. Civil Service Commission. 1974. 46 min. Distributed by U.S. National Audiovisual Center.

A simulated public sector negotiations session involving the issues of subcontracting and work schedules.

BUTTON, BUTTON. U.S. Department of Labor. 1975. 29 min. Distributed by U.S. National Audiovisual Center.

A dramatization of a grievance procedure at the second level in which a tax assessor is given a disciplinary layoff for refusing to remove a button supporting a tax increase bill.

CASE OF THE LOST FRINGE BENEFIT. American Arbitration Association. 1971. 20 min.

An arbitration in a municipal water works plant concerning the discontinuance of a fringe benefit. Questions raised are the arbitrability of the dispute and the right of the city to discontinue the benefit.

CITY-UNION POWER NOW. WGBH-TV (Boston, Mass.). 1969. 58 min.
Distributed by Reeves Broadcasting Corp. (New York)

Public sector collective bargaining at the municipal level dramatized with discussion of issues by labor relations experts. A five-minute trailer on New Jersey's Chapter 303 is added.

COUNTDOWN TO A CONTRACT. CBS-TV. 1970. 30 min.

The actual filming of the final days of a dispute and negotiations between the League of New York Hospitals and union local 1199.

DRAMA COACH GRIEVANCE. American Arbitration Association.
1972. 20 min.

An arbitration of a grievance involving a teacher who was denied promotion to chairperson of the English department in her school.

THE DYNAMICS OF NEGOTIATIONS IN PUBLIC EDUCATION. Educational
Service Bureau. 1970. 45 min.

Negotiating teams from a school board and a teacher's group illustrate the techniques of contract negotiations.

SOLVING IMPASSES IN EDUCATIONAL INSTITUTIONS. Educational Service
Bureau. 1970. 35 min.

Portrays the use of a third party to resolve differences that occur during contract negotiations.

TROUBLE IN THE FIREHOUSE. American Arbitration Association.
1973. 26 min.

Produced for the International Association of Firefighters, this film concerns an arbitration arising out of a city's decision to call a moratorium on new hiring and the union's claim that the failure to fill the manning tables is a violation of the contract.

VIEWS FROM THE WORKPLACE. U.S. Department of Labor. 1975.
23 min. Distributed by U.S. National Audiovisual Center.

Illustrates different grievances and how they are handled through eight situations taking place in various types of state and local employment.

FINAL OFFER ARBITRATION
(A Selected Reading List)

Aron, Lester
The case for fair and final offer arbitration. New Jersey School Boards Association, 1975, 31pp.

Bellman, Howard and Harry Graham
"A suggested remedy for refusal to bargain in the public sector; final offer arbitration." Journal of Collective Negotiations in the Public Sector, Spring 1974, pp. 183-189.

Feuille, Peter
Final offer arbitration. International Personnel Management Association, 1975, 56pp.

Grodin, Joseph R.
"Either-or arbitration for public employee disputes." Industrial Relations, May 1972, pp. 260-266.

Long, Gary and Peter Feuille
"Final-offer arbitration; 'sudden death' in Eugene." Industrial and Labor Relations Review, January 1974, pp. 186-203.

Nelson, Nels E.
"Final-offer arbitration; some problems." Arbitration Journal, v. 30, #1, 1975, pp. 50-58.

Rehmus, Charles
"Is a 'final offer' ever final?" Monthly Labor Review, September 1974, pp. 43-45.

Stern, James L.
"Final offer arbitration-initial experience in Wisconsin." Monthly Labor Review, September 1974, pp. 39-43.

Stern, James L. and others
Final-offer arbitration. D.C. Heath, 1975, 256pp.

Witney, Fred
"Final-offer arbitration; the Indianapolis experience." Monthly Labor Review, May 1973, pp. 20-25.

Zack, Arnold
"Final offer selection-panacea or Pandors's box?" New York Law Forum, Winter 1974, pp. 567-585.